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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE: [Redacted]

Office: Philadelphia

Date:

OCT 29 2002

IN RE: Applicant: [Redacted]

APPLICATION: Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act, 8 U.S.C. § 1431

IN BEHALF OF APPLICANT: Self-represented

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting District Director, Philadelphia, Pennsylvania, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The applicant was born on November 6, 1989, in the Dominican Republic. The applicant's father, [REDACTED] was born in the [REDACTED] in May 1961 and became a naturalized U.S. citizen on October 25, 1999. The applicant's mother, [REDACTED] was born in the [REDACTED] in May 1965 and never had a claim to United States citizenship. The applicant's parents never married each other. On January 8, 1990, [REDACTED] acknowledged the applicant as his son and a birth certificate was issued. The applicant was lawfully admitted for permanent residence on February 3, 1995. The applicant is seeking a certificate of citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1431.

The acting district director, following Matter of Reyes, 17 I&N Dec. 512 (BIA 1980), concluded that the applicant was born out of wedlock and was not legitimated by his father under the laws of the father's residence or domicile while the son was in the father's legal custody. The acting district director then denied the application accordingly.

On appeal, the applicant's father states that he is the parent guardian of the applicant and brought the applicant to the United States in 1995. The applicant's father asserts that he has taken care of the applicant by himself since 1995.

A child born out of wedlock in the [REDACTED] is placed in the same legal position as one born in wedlock once the child has been acknowledged by the father in accordance with [REDACTED] law and therefore qualifies as a "legitimated" child under section 101(b)(1)(C) of the Act. See, Matter of Cabrera, 21 I&N Dec. 589 (BIA 1996). Matter of Reyes, overruled.

The Board also found that the father met the legal custody requirement of section 101(b)(1)(C) of the Act as interpreted in Matter of Rivers, 17 I&N Dec. 419 (BIA 1980), holding that a natural father is presumed to have legal custody of his child at the time of legitimation in the absence of affirmative evidence indicating otherwise.

The applicant's father married [REDACTED] a U.S. citizen, on May 11, 1992, in [REDACTED]. The applicant became the beneficiary of an approved Petition for Alien Relative on April 21, 1994, as the step-child of a U.S. citizen, [REDACTED]. The applicant was living in the [REDACTED] at the time the visa petition was approved, and he intended to live in [REDACTED] with the petitioner and his father, who was the beneficiary of a separate visa petition.

Sections 320 and 322 of the Act were amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA benefits all persons who have not yet reached their 18th birthdays as of February 27, 2001. The applicant was 11 years and 3 months old on February 27, 2001. Therefore, he is eligible for the benefits of the CCA.

Section 320(a) of the Act, effective on February 27, 2001, provides, in part, that a child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:

- (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
 - (2) The child is under the age of eighteen years.
 - (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.
- (b) Subsection (a) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

The record reflects that the applicant was acknowledged by his father in January 1990 and a corresponding birth certificate was issued qualifying him as a legitimated child, is under the age of 18 years, and is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

8 C.F.R. 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant has met that burden. Therefore, appeal will be sustained. The acting district director's decision will be withdrawn, and the application will be approved.

ORDER: The appeal is sustained. The acting district director's decision is withdrawn, and the application is approved.