



EQ

U.S. Department of Justice

Immigration and Naturalization Service

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

FILE: [REDACTED] Office: Philadelphia

Date: JAN 14 2003

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Section 341(a) of
the Immigration and Nationality Act, 8 U.S.C. § 1452(a)

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 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 June 4, 1983, in Tanzania. The applicant's father, [REDACTED], was born in Tanzania in May 1962 and became a naturalized U.S. citizen on January 8, 1997. The applicant's mother, [REDACTED], was born in Tanzania in 1955 and never had a claim to United States citizenship. The applicant's parents married each other on March 31, 1977, and divorced on August 22, 1989. The applicant was lawfully admitted for permanent residence on August 2, 2000, at the age of 17 years and 2 months. 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 district director reviewed the record and concluded that the applicant failed to establish that she was in the legal custody of the citizen parent prior to her 18th birthday. The District Director then denied the application accordingly.

On appeal, the applicant states that she can provide original documents to prove that she has been in the custody of her father since she was lawfully admitted for permanent residence.

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 birthday as of February 27, 2001. The applicant was 17 years and 8 months old on February 27, 2001. Therefore, she 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).

A supplementary affidavit attached to the parent's divorce decree indicates that custody of the applicant and her two siblings was

given to the mother by mutual consent. The record contains a statement by the applicant's mother indicating that the mother has no objection if her son, [REDACTED] the applicant's brother, resides permanently with his father in America. There is no such document regarding the applicant.

Service Memorandum HQISD 70/33 dated February 26, 2001, contains implementation instructions for Title I of the CCA for all Service offices. The memorandum states that the Service will determine legal custody based on either the adoption decree or custody order issued pursuant to a divorce or separation agreement. The Service will also presume legal custody under certain factual circumstances. For children admitted as lawful permanent residents prior to February 27, 2001, the Service will presume that the U.S. citizen parent had legal custody, if the child is still living with and in the physical custody of the citizen parent on February 27, 2001.

The applicant was lawfully admitted for permanent residence prior to February 27, 2001, and was still living with and in the physical custody of the citizen parent on February 27, 2001.

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. In this case, the applicant has met that burden. Therefore, the district director's decision will be withdrawn, and the appeal will be sustained.

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