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U.S. Department of Homeland Security
Citizenship and Immigration Services

[Handwritten initials]

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street N.W.
Washington, D.C. 20536

[Redacted]

OCT 27 2003

FILE: [Redacted] Office: PHILADELPHIA, PA Date:

IN RE: Applicant: [Redacted]

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

ON BEHALF OF APPLICANT:
[Redacted]

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 Citizenship and Immigration Services (CIS) 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.

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Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting District Director, Philadelphia, Pennsylvania. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The application is now before the AAO on a Service motion to reopen. The previous decisions will be withdrawn and the application approved.

The applicant was born on December 19, 1984, in India. The applicant's father, [REDACTED] was born in India in June 1960 and became a naturalized United States (U.S.) citizen on July 6, 2000. The applicant's mother, [REDACTED] was born in India in June 1965 and never had a claim to U.S. citizenship. The applicant's parents married each other on July 15, 1983, and divorced on October 27, 1994. The applicant was lawfully admitted for permanent residence on April 19, 1997. The applicant is seeking a certificate of citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1431.

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.

In their previous decisions, both the acting district director and the AAO found that the applicant was not in the legal custody of his U.S. citizen father, as required by section 320(a)(1) of the Act, and denied the application accordingly.

On motion, the AAO has thoroughly reviewed all the documents contained in the record. These documents include a divorce decree dated October 27, 1994 and a written agreement between the applicant's parents that discusses various issues including alimony and maintenance settlements, and custody of the children. The date of this document is uncertain, but it was clearly produced after the divorce as it refers to the date of the divorce. This document appears to be an addendum to the divorce decree that was produced in order to clarify issues not finalized in the initial divorce decree.

The divorce decree does not address the issue of custody of the children, however, the subsequent agreement states in part:

- v) That both the children would remain with the second party (the father) and the first party (the mother)

would have to [sic] right to meet them whenever they come to India because the children are ordinarily residents of U.S.A.

This document clearly allows the children to reside with their father in the United States. As the divorce decree did not address custody of the children, this later agreement would appear to serve as an official custody agreement between the parents.

Legal custody as defined in 8 C.F.R. § 320.1 is "the responsibility for and authority over a child." The regulation further states:

In the case of a child of divorced or legally separated parents, the Service will find a U.S. citizen parent to have legal custody of a child, for the purpose of the CCA, where there has been an award of primary care, control, and maintenance of a minor child to a parent by a court of law or other appropriate government entity pursuant to the laws of the state or country of residence. The Service will consider a U.S. citizen parent who has been awarded "joint custody," to have legal custody of a child. There may be other factual circumstances under which the Service will find the U.S. citizen parent to have legal custody for purposes of the CCA.

Pennsylvania Statutes and Consolidated Statutes Annotated, Title 23, Part VI, Chapter 53, section 5302, defines legal custody as "the legal right to make major decisions affecting the best interests of a minor child, including but not limited to, medical, religious and educational decisions."

The AAO finds that the custody agreement between the applicant's parents meets the requirements of both 8 C.F.R. § 320.1 and Pennsylvania State law, the state in which the applicant resides. In addition, as asserted by counsel on appeal, when the applicant was granted a visa to enter the United States as a permanent resident, the embassy would have explored the issue of custody before allowing a minor child to be removed from the country.

In reviewing all the materials contained in the record, the AAO has now concluded that sufficient documentation exists to determine that the applicant was in the legal and physical custody of his U.S. citizen father as required by section 320(a)(1) of the Act.

ORDER: The previous decisions of the district director and AAO are withdrawn and the application is approved.