U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: SAN ANTONIO, TX [redacted] AUG 25 2004

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 of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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DISCUSSION: The application was denied by the Interim District Director, San Antonio, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on July 29, 1986, in . The applicant's mother, was born in She married a United States (U.S.) citizen, on April 2, 2001, and is a conditional lawful permanent resident. The applicant was legally adopted by on February 6, 2003, when she was sixteen years old. The record reflects that the applicant's younger sister, was also adopted by on February 6, 2003, at the age of fourteen. The applicant obtained conditional permanent resident status on March 25, 2002. The applicant seeks a certificate of U.S. citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The record reflects that filed a Form N-643, Application for Certificate of Citizenship on Behalf of An Adopted Child by U.S. Citizen Adoptive Parents (N-643 application) on May 1, 2003. On July 2, 2003, the director concluded that the applicant did not meet the definition of "child" set forth in section 101(b)(1)(E)(i) of the Act, 8 U.S.C. § 1101(b)(1)(E)(i) because she was not under the age of sixteen at the time of her adoption. Accordingly, the director determined that the applicant failed to meet the definition of "child" under section 320 of the Act. The application was denied accordingly.

On appeal, counsel asserts that the applicant meets the definition of "child" set forth in section 101(b)(1)(E) of the Act, because her sister, was adopted by while under the age of sixteen, and because the applicant was adopted while under the age of eighteen. Counsel concedes that the applicant will not satisfy two-year legal custody requirements under section 101(b)(1)(E)(i) of the Act prior to her eighteenth birthday. Counsel asserts, however, that under section 320 of the Act, the applicant is not required to meet two-year legal custody requirements prior to turning eighteen.

Section 320 of the Act states in pertinent part:

> (a) 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:
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> (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
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> (2) The child is under the age of eighteen years.
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> (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.
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> (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).

Section 101(b)(1)(E) of the Act states, in pertinent part, that the term "child" means an unmarried person under twenty-one years of age who is-

> (i) [A] child adopted while under the age of sixteen years if the child has been in the

> legal custody of, and has resided with, the adopting parent or parents for at least two years: Provided, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act; or
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> (ii) Subject to the same proviso as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) or subparagraph (F)(i); (II) was adopted by the adoptive parent or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), except that the child was adopted while under the age of 18 years.

The record in the present case contains adoption decree evidence establishing that the applicant was under the age of eighteen when she was adopted by The record additionally reflects that the applicant's younger sister born May 31, 1988, was adopted by on February 6, 2003, at the age of fourteen. Nevertheless, the record also reflects that will not meet the legal custody requirements set forth in section 101(b)(1)(E)(i) of the Act until February 6, 2005 at which time she will be over the age of sixteen. therefore does not presently qualify as a "child" under section 101(b)(1)(E)(i). Accordingly, the AAO finds that the applicant has failed to establish that she qualifies for consideration as the natural sibling of a "child" under section 101(b)(1)(E)(ii) of the Act. The AAO finds further that because the applicant was not under the age of sixteen at the time of her adoption, she also does not qualify for consideration under clause (i) of section 101(b)(1)(E) of the Act.

The AAO notes that even if the applicant had established that she met the requirements set forth in section 101(b)(1)(E)(ii) of the Act, she would nevertheless have been ineligible for citizenship under section 320 of the Act. Precedent legal decisions have held that the two-year residence requirement set forth in section 101(b)(1)(E) of the Act may be satisfied either before or after an adoption. *See Matter of Repuyan,* 19 I&N Dec. 119, 120 (BIA 1984). Legal custody, however, vests "by virtue of either a natural right or a court decree". *See Matter of Harris,* 15 I&N Dec. 39 (BIA 1970). In the applicant's case, obtained legal custody over the applicant through a court ordered adoption decree dated February 6, 2003.

The provisions set forth in section 320 of the Act reflect that, in order to qualify for citizenship, the applicant must demonstrate that she meets the definition of "child" set forth in section 101(b)(1)(E) of the Act, prior to her eighteenth birthday. The record reflects that the applicant will turn eighteen years old on July 29, 2004. However, the applicant will not meet the legal custody requirements necessary to qualify as a "child" under section 101(b)(1)(E) of the Act until February 6, 2005, after she has turned eighteen. Because the applicant will not meet the definition of "child" prior to her eighteenth birthday, she is statutorily ineligible for consideration under section 320 of the Act.

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 burden has not been met and the appeal will be dismissed.

ORDER: The appeal is dismissed.