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U.S. Citizenship
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Services

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JUN 01 2004

FILE: [REDACTED] Office: PROVIDENCE, RI

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:

SELF-REPRESENTED

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

DISCUSSION: The application was denied by the Officer in Charge, Providence, Rhode Island. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be sustained.

The applicant was born on January 7, 1986, in the Dominican Republic. The applicant's father, Socrates Santiago Fuerte Vargas was born in the Dominican Republic on September 17, 1963, and he became a naturalized United States (U.S.) citizen on January 12, 2000. The applicant's mother, Jacinta de la Cruz, was born in the Dominican Republic and does not have a claim to United States citizenship. The applicant's parents were never married. The record indicates that the applicant was lawfully admitted into the United States for permanent residence on November 11, 1994. The applicant seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The officer in charge concluded that the applicant had failed to establish that she was legitimated by her father or that she met the definition of "child" as set forth in section 101 of the Act. The application was denied accordingly.

On appeal, the applicant, through her father, indicates that she meets the definition of a legitimated child and that she meets the requirements set forth for automatic citizenship under section 320 of the Act.

Section 320 of the Act was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA allows a child born outside of the United States who has not yet reached his or her eighteenth birthday as of February 27, 2001, to automatically become a U.S. citizen upon the fulfillment of the following conditions:

- (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.

The applicant was fifteen years old on February 27, 2001. She therefore qualifies for consideration under section 320 of the Act. Section 101(c) of the Act, 8 U.S.C. § 1101(c) states in pertinent part:

The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere . . . if such legitimation . . . takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating . . . parent or parents at the time of such legitimation.¹

¹ The AAO notes that the officer in charge's decision quoted the definition of "child" contained in section 101(b)(1)(C) of the Act, for Title I and II immigrant and nonimmigrant visa purposes. A review of the Act reflects that the definition of "child" set forth in section 101(c) of the Act is the definition to be used for most Title III naturalization and citizenship purposes. The AAO finds the above error harmless, however, as both definitions set forth identical legitimation requirements.

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In *Matter of Cabrera*, 21 I&N Dec. 589 (BIA 1996), the Board of Immigration Appeals (Board) found that as of January 1, 1995, all legal distinctions between children born in and out of wedlock were eliminated in the Dominican Republic once parentage was established according to legal procedures in that country. The Board found that a birth certificate containing a father's name was evidence of parentage and acknowledgment of a child. *See Matter of Cabrera* at 590. The Board found further that a child residing or domiciled in the Dominican Republic qualified as a legitimated child as soon as his or her father acknowledged paternity in accordance with Dominican law. *Id.* at 592.

The record in the present case contains a birth certificate extract containing the applicant's father's name and reflecting that Socrates Santiago Fuerte Vargas acknowledged his parentage over the applicant at the time of her birth. The AAO finds that the applicant was therefore legitimated by her father at the time of her birth in January 1986. The record additionally contains a Court Order from the Court of the Municipality of Maimon, in the Dominican Republic, indicating that the applicant's father was awarded sole custody of the applicant on November 6, 2001, when she was 15 years old. The AAO additionally notes that the Board held in *Matter of Rivers*, 17 I&N Dec. 419 (BIA 1980) 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 AAO therefore finds that the applicant was in the legal custody of her father prior to her sixteenth birthday. The applicant therefore meets the definition of "child" set forth in section 101(c) of the Act.

The record additionally reflects that the applicant was admitted into the United States as a lawful permanent resident on November 11, 1994, when she was 8 years old, and it appears from the record that the applicant has resided in the physical custody of her father since that time. Moreover, the applicant's father became a naturalized U.S. citizen on January 12, 2000, when the applicant was 14 years old. The AAO notes that section 320 automatic citizenship requirements in the present case are assessed as of February 27, 2001. *See Matter of Jesus Enrique Rodriguez-Tejedor*, 23 I&N Dec. 153, 157 (BIA 2001). The AAO finds that the applicant has established that she was under the age of 18 on February 27, 2001, that her father became a U.S. citizen prior to her 18th birthday, and that she met the definition of "child" and the legal and physical custody requirements set forth in section 320 of the Act on that date.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. *See also* § 341 of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1452. The AAO finds that the applicant has met her burden of proof. The appeal will therefore be sustained.

ORDER: The appeal is sustained.