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**U.S. Citizenship
and Immigration
Services**



FILE: [REDACTED] Office: HARTFORD, CT

Date: **MAR 09 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:

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Boston, Massachusetts, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant was born on August 5, 1987, in Cape Verde. The record reflects that the applicant's parents never married. The applicant's father, [REDACTED] was born in Cape Verde on September 26, 1957, and he became a naturalized United States (U.S.) citizen on June 21, 1996. The applicant's mother, [REDACTED] was born in Cape Verde and is not a United States citizen. The applicant was lawfully admitted for permanent residence in the United States on June 16, 1992. She seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The district director concluded that, although the applicant had established that she was legitimated at birth, she had failed to establish that she was in the physical and legal custody of her father at the time of her legitimation. The application was denied accordingly.

On appeal, the applicant asserts that she has lived with her father for her entire life and that she meets the requirements for a certificate of citizenship pursuant to 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 benefits all persons who have not yet reached their 18th birthdays as of February 27, 2001. The applicant was 13 years old on February 27, 2001. She therefore meets the age requirement for benefits under the CCA.

Section 320 of the Act, effective on February 27, 2001, states that:

(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:

- (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 district director states in his decision that the applicant does not meet the definition of "child" as set forth in section 101(b)(1)(C) of the Act; 8 U.S.C. § 1101(b)(1)(C), because she failed to establish that she was in the legal and physical custody of her father at the time that she was legitimated at birth. The AAO notes that the district director erroneously states that the definition of child under section 101(b)(1)(C) of the Act, requires that a "child is in the legal **and physical** custody of the legitimating parent or parents at the time of such legitimation." (Emphasis added). The definition set forth in section 101(b)(1)(C) of the Act contains no physical custody requirement, and states, in pertinent part that:

(1) The term "child" means an unmarried person under twenty-one years of age who is-

(C) 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 or outside the United States, if such legitimation takes place before the child reaches the age of eighteen years

and the child is in the legal custody of the legitimating parent or parents at the time of such legitimation.

The AAO notes further that the definition of "child" contained in section 101(b)(1)(C) of the Act pertains to immigrant and non-immigrant cases arising under Title I and II of the Act. The proper definition of "child" for certificate of citizenship cases arising under Title III of the Act, is contained in section 101(c) of the Act, rather than in section 101(b)(1)(C) of the Act.

Section 101(c) of the Act states, in pertinent part that:

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 or adopting parent or parents at the time of such legitimation or adoption.

The district director's decision notes that:

Under the Republic of Cape Verde, Decree-Law No. 84/76 of September 25, 1976, "Laws on Marriage, Divorce and Filiation," effective October 01, 1976, and Judgement No. 16-80, Department of Studies, Legislation and Documentation of the Ministry of Justice of the Republic of Cape Verde, dated May 21, 1980, there is no distinction between legitimate and illegitimate children, and all children have equal rights under the law.

See also, Matter of Cardoso, 19 I&N Dec. 5 (BIA 1983). The evidence reflects that the applicant was born in 1987, that parentage is not an issue in the present case, and that, based on Cape Verde law, the applicant was legitimated at the time of her birth. Moreover, the AAO notes the Board of Immigration Appeals finding in *Matter of Rivers*, 17 I&N Dec. 419, 422-23 (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, and that:

Unless there is evidence to show that the father of a legitimated child has been deprived of his natural right to custody, he will be presumed to share custody with the mother, and to satisfy the legal custody requirement of section 101(b)(1)(C).

Id. at 423. Based on the evidence in the record and the Board of Immigration Appeals precedent case regarding a father's legal custody over his child, the AAO finds that the applicant has established her father had legal custody over the applicant at the time of her legitimation, which, according to Cape Verde law, occurred at the time of the applicant's birth. The applicant therefore meets the definition of "child" as set forth in section 101(c) of the Act.

The AAO notes further that, in order to qualify for automatic citizenship under section 320(a)(3) of the Act, a child must reside in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence. The only time frame requirement for meeting the conditions set forth in section 320 of the Act, relates to the conditions being met prior to the child's eighteenth birthday. Furthermore, a February 26, 2001, Immigration and Naturalization Service (now Citizenship and Immigration Services, CIS) issued memorandum states:

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.

See (HQISD 70/33), "Implementation Instructions for Title I of the Child Citizenship Act of 2000, Public Law 106-395 (CCA), by William R. Yates, Deputy Executive Associate Commissioner, Office of Field Operations at 7.

Based on the evidence in the record, it appears that the applicant resided with her father prior to and subsequent to February 27, 2001. The applicant's father has therefore met both the physical and legal custody requirements set forth in section 320 of the Act.

The applicant is therefore entitled to automatic citizenship pursuant to section 320 of the Act. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.