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

PUBLIC COPY

A large, handwritten signature or set of initials, possibly "Er", written in dark ink.

FILE: [REDACTED] Office: NEW YORK, NEW YORK Date: **FEB 17 2005**

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.

A handwritten signature in dark ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

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

The record reflects that the applicant was born in China on June 2, 1987. The applicant's mother, Lin, was born in China on April 20, 1954, and she became a naturalized U.S. citizen on January 4, 2002, when the applicant was fourteen years old. The applicant's father, was born in China on May 22, 1953, and he is not a U.S. citizen. The applicant's parents married in China in 1983. They divorced in January 1992. The record reflects that the applicant obtained U.S. conditional lawful permanent resident status on October 25, 2001, pursuant to an immigrant visa petition filed by her mother. The applicant presently seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The interim district director concluded that the applicant had failed to establish she was admitted into the United States pursuant to a lawful admission for permanent residence, as required by section 320 of the Act. The application was denied accordingly.

On appeal, the applicant, through her mother, asserts that she was admitted into the United States as a lawful permanent resident and that she is entitled to a certificate of citizenship. The applicant notes that she obtained a U.S. passport in March 2003, pursuant to the provisions of section 320 of the Act, and the applicant requests a refund of the \$110.00 appeal fee in her case.

The AAO notes that it has no authority to order the return of the applicant's appeal fee. *See generally*, 8 C.F.R. § 103.1 (2003) and 8 C.F.R. § 2.1 (2004) (Discussing AAO appellate authority).

Section 320 of the Act states, in pertinent part, 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.

In the present matter, the applicant has established that her mother became a naturalized U.S. citizen in January 2002, prior to the applicant's eighteenth birthday. The applicant has also established that she is presently under the age of eighteen. The AAO additionally finds that the applicant has established she was admitted into the United States pursuant to a lawful admission for permanent residence. The AAO notes that although the applicant was a "conditional" lawful permanent resident at the time of her admission into the United States, the definition of a lawful permanent resident on a conditional basis reflects that conditional permanent residents are for all practical purposes, considered lawful permanent residents, except for the elimination of the condition on that status. *See* section 216(a)(1) of the Act; 8 U.S.C. § 1186(a)(1). The AAO additionally notes that the U.S. Department of State (DOS) further clarified that, "[f]or purposes of naturalization, the alien who is in conditional lawful permanent resident status is considered to be lawfully admitted for permanent residence." *See* 64 No. 2 Interpreter Releases 34 (January 12, 1987) (Discussing and

citing DOS Wire No. 87, State 006772, sent January 9, 1987 (TAGS:CVIS (Marriage Fraud Act of 1986) Subject: Marriage [REDACTED] ct H.R. 3737 (P.L. 99-639)).

Despite the above findings, however, the AAO finds that the information contained in the present record is insufficient for an AAO determination regarding whether the applicant meets legal custody requirements set forth in section 320(a)(3) of the Act. The record reflects that the applicant's parents divorced in January 1992. The AAO notes that, in the absence of a judicial determination or grant of custody in a case of a legal separation of the naturalized parent, the parent having actual, uncontested custody of the child is to be regarded as having "legal custody". See *Matter of M*, 3 I&N Dec. 850, 856 (BIA 1950). The present record does not, however, contain a copy of the applicant's parent's divorce decree, nor does the record contain any information relating to whether or not the applicant's mother was awarded legal custody over the applicant at the time of her divorce from the applicant's father.

Nevertheless, because the record does contain evidence that the applicant was issued a valid U.S. passport by the U.S. Department of State on March 12, 2003, the AAO finds that it is not necessary to remand the present matter to the New York district office for reconsideration of legal custody issues. In *Matter of Villanueva*, 19 I&N, Dec. 101 (BIA 1984), the Board of Immigration Appeals held that, unless void on its face, a valid United States passport issued to an individual as a citizen of the United States is not subject to collateral attack in administrative immigration proceedings, but constitutes conclusive proof of such person's United States citizenship. 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. The AAO finds that the passport evidence submitted by the applicant establishes by a preponderance of the evidence that the applicant is a U.S. citizen. The appeal will therefore be sustained.

ORDER: The appeal is sustained.