

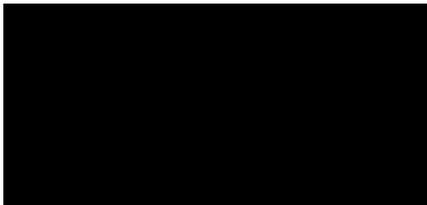
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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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*ER*

JUN 10 2005

FILE:



Office: NEW YORK, NEW YORK Date:

IN RE:

Applicant:



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, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Ecuador on May 20, 1986. The applicant turned eighteen on May 20, 2004. The applicant's mother, [REDACTED] was born in Ecuador on December 19, 1966, and she became a naturalized U.S. citizen on June 14, 2001, when the applicant was fifteen years old. The applicant's father is not a U.S. citizen. The record reflects that the applicant's parents did not marry. The applicant was admitted into the United States as a lawful permanent resident on August 23, 1995. He 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 the applicant had failed to establish that he resided in the U.S. in the physical custody of his U.S. citizen parent, as required by section 320 of the Act. The application was denied accordingly.

On appeal, the applicant, through his mother, asserts that he resides in Ecuador during the school year and that he returns to the U.S. during vacations. The applicant asserts that he believes his legal residence is in the United States and that he is entitled to acquire citizenship through his U.S. citizen mother.

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.

The record reflects that the applicant's mother became a naturalized U.S. citizen in 2001, and that the applicant was admitted into the United States in 1995. Both events occurred while the applicant was under the age of eighteen. The record additionally reflects that the applicant was born out of wedlock to his mother and that he meets the definition of "child" as set forth in section 101(c) of the Act, 8 U.S.C. § 1101(c), and that he meets the legal custody requirements set forth in section 320 of the Act. *See generally, Matter of Dela Rosa*, 14 I&N Dec. 728, 729 (BIA 1974).

The AAO finds, however, that the evidence in the record fails to establish that the applicant resided in the physical custody of his U.S. citizen mother prior to his eighteenth birthday, as required by section 320 of the Act.

Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33), states that, "[t]he term "residence" means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent." The Board of Immigration Appeals additionally clarified in, *Matter of Jalil*, 19 I&N Dec. 679 (BIA 1988), that, the maintenance of financial interests, the retention of a house, or the intention to return does not establish a person's "dwelling place in fact" for purposes of section 101(a)(33) of the Act.

The record contains no evidence to establish that the applicant resides in the United States with his mother. Moreover, the AAO finds that vacation visits to his mother's house do not satisfy the definition of "residence" as set forth in section 101(a)(33) of the Act. The AAO therefore finds that the applicant does not qualify for citizenship 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. The applicant has failed to meet his burden. The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.