

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

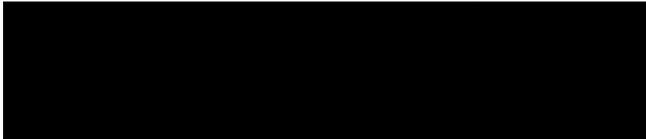
PUBLIC COPY

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

E2

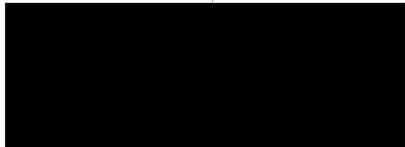


FILE: [REDACTED] Office: NEW YORK, NEW YORK Date: JUN 16 2005

IN RE: Applicant: [REDACTED]

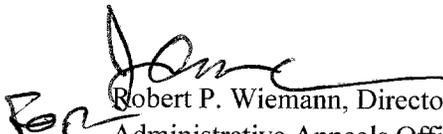
APPLICATION: Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act; 8 U.S.C. § 1431.

ON BEHALF OF APPLICANT:



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 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 Saudi Arabia on September 20, 1985. The applicant's father, [REDACTED] was born in Egypt on June 28, 1945, and he became a naturalized U.S. citizen on June 14, 2002, when the applicant was sixteen years old. The applicant's mother, [REDACTED] was born in Egypt on March 7, 1947, and she is not a U.S. citizen. The record reflects that the applicant's parents were married in Egypt on December 3, 1962. The applicant was admitted into the United States as a lawful permanent resident on January 21, 1996, when he was ten years old. He presently seeks a certificate of citizenship under 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 prior to his eighteenth birthday, as required by section 320 of the Act. The application was denied accordingly.

On appeal, the applicant, through counsel asserts that federal tax return evidence and evidence that his mother obtained a New York mobile food vendor license, establish that the applicant resides in the U.S. in the physical custody of his U.S. citizen father. Counsel asserts further that any contrary conclusions reached by U.S. Citizenship and Immigration Services (CIS) appear to be the result of a miscommunication with the applicant.

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 was admitted into the United States in 1996, and that the applicant's father became a naturalized U.S. citizen in 2002, prior to the applicant's eighteenth birthday. The record additionally reflects that the applicant's parents married prior to the applicant's birth, and that both parents share legal custody over the applicant. *See generally, Matter of Rivers*, 17 I&N Dec. 419 (BIA 1980). However, the AAO finds that the evidence in the record fails to establish that the applicant resided in the United States in the physical custody of his father 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 a "Record of Sworn Statement" signed by the applicant on March 10, 2004, in which the applicant states under oath:

I attend the Faculty of Commerce College in Zagagag, Egypt, where I am in my second year. I reside with my mother at [REDACTED] Egypt during the school year. I attended Alphey Minea El-Komah high school in Minea El-Komah, Egypt and also reside with my mother during the school year. I also attended elementary school in Malames Markez Mina El-Komah, Egypt also residing with my mother during the school year.

The record additionally contains a February 28, 2004, letter signed by the Dean of the Faculty of Commerce College in Egypt, stating that the applicant, [REDACTED] is attending his second year at the college.

The AAO finds that the federal tax returns filed by the applicant's father as well the New York mobile food vendor's license issued to the applicant's mother's in July 2003, fail to address or overcome the Egyptian college letter and the applicant's sworn testimony regarding his residence in Egypt. The AAO therefore finds that the applicant has failed to meet the U.S. residence and physical custody requirements for citizenship as set forth in section 320 of the Act.

The AAO notes that the applicant has also failed to establish that he qualifies for citizenship under section 322 of the Act, 8 U.S.C. § 1433. Section 322 of the Act applies to children born and residing outside of the United States and states, in pertinent part, that:

(a) A parent who is a citizen of the United States . . . may apply for naturalization on behalf of a child born outside of the United States who has not acquired citizenship automatically under section 320. The Attorney General [now Secretary, Homeland Security "Secretary"] shall issue a certificate of citizenship to such applicant upon proof, to the satisfaction of the Attorney General [Secretary], that the following conditions have been fulfilled:

- (1) At least one parent . . . is a citizen of the United States, whether by birth or naturalization.
- (2) The United States citizen parent--
 - (A) has . . . been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years; or
 - (B) has . . . a citizen parent who has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years.
- (3) The child is under the age of eighteen years.
- (4) The child is residing outside of the United States in the legal and physical custody of the applicant

(5) The child is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.

The record contains no evidence to establish that prior to his eighteenth birthday, the applicant resided in the physical custody of his U.S. citizen father outside of the United States. Moreover, the applicant failed to establish that he was temporarily admitted into the United States or that his father was physically present in the U.S. or its outlying possessions for at least five years since becoming a U.S. citizen.

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 Act, 8 U.S.C. § 1452. The applicant has not met his burden, and the appeal will be dismissed.

ORDER: The appeal is dismissed.