

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



U.S. Citizenship
and Immigration
Services

E2

PUBLIC COPY



FILE: EAC010460001 Office: NEWARK, NJ Date: **MAR 10 2005**



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.

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Newark, New Jersey. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Iran on January 27, 2000. The applicant's father, [REDACTED] was born in Iran on May 30, 1958, and he became a naturalized U.S. citizen on August 8, 2000, when the applicant was less than one year old. The applicant's mother, [REDACTED] was born in Iran, and she is not a U.S. citizen. The applicant's parents married in Iran on April 13, 1999, and the applicant was admitted into the United States as a lawful permanent resident on June 1, 2002. 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 district director concluded that the applicant was ineligible for citizenship under section 320 of the Act, because he did not reside in the United States in the physical custody of his U.S. citizen parent, as required by section 320(a)(3) of the Act. The application was denied accordingly.

On appeal, the applicant, through his father, asserts that he resides in the U.S. with his father. In support of his assertion, the applicant submits a copy of his Social Security Card and his U.S. Permanent Resident Card.

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 in the present matter reflects that the applicant's father became a naturalized U.S. citizen in 2000, and that the applicant became a U.S. lawful permanent resident in 2002. Both events occurred while the applicant was under the age of eighteen. The AAO additionally notes that the legal custody requirements set forth in section 320 of the Act have been met.

Nevertheless, the AAO finds that the information contained in the record fails to establish, by a preponderance of the evidence, that the applicant resides in the physical custody of his U.S. citizen father, as required by section 320(a)(3) 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 U.S. Permanent Resident Card and the Social Security Card evidence submitted on appeal contain no residence information for the applicant, and the record contains no other evidence to establish that the applicant presently resides with his U.S. citizen father in the United States, or that he has ever resided in his father's physical custody in the United States.

8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish his claimed citizenship by a preponderance of the evidence. Based on the above evidence, the applicant has failed to establish that he resides in the physical custody of his U.S. citizen parent, as set forth in section 320(a)(3) of the Act. Accordingly, the applicant has failed to establish that he is eligible for a certificate of citizenship under section 320 of the Act, and the appeal will be dismissed.

ORDER: The appeal is dismissed.