

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

E2



FILE:



Office: NEW YORK, NY

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.

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 Jamaica on June 23, 1983. The applicant's mother, [REDACTED] was born in Jamaica on May 16, 1960, and she became a naturalized U.S. citizen on August 7, 1997, when the applicant was fourteen years old. The applicant's father, [REDACTED] was born in Jamaica, and he is not a U.S. citizen. The record reflects that the applicant's parents were married in Jamaica in July 1982. Her parents obtained a divorce in New York on February 3, 1995. The applicant was admitted into the United States as a lawful permanent resident on June 3, 1991, when she was seven years old. She 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 that the applicant had failed to establish she resided in the U.S. in the legal custody of her U.S. citizen parent, as required by section 320 of the Act. The application was denied accordingly.

On appeal, the applicant, through her mother, asserts that although the divorce decree between her parents awards legal custody to the applicant's father, (Mr. [REDACTED] the applicant's mother assumed legal custody prior to the applicant's eighteenth birthday because Mr. [REDACTED] was incarcerated and later deported from the United States.

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 eighteenth birthdays as of February 27, 2001. Because the applicant was seventeen years old on February 27, 2001, she meets the age requirement for benefits under the CCA.

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 1991, and that the applicant's mother became a naturalized U.S. citizen in 1997. Both events occurred prior to the applicant's eighteenth birthday. The applicant therefore meets the requirements set forth in subsections (a)(1) and (a)(2) of section 320 of the Act.

Legal and physical custody requirements set forth in section 320 of the Act are assessed as of February 27, 2001, the date that the amendments made by the CCA legally came into effect. *See Matter of Jesus Enrique Rodriguez-Tejedor*, 23 I&N Dec. 153, 157 (BIA 2001). Federal tax records submitted by the applicant reflect that she resided in her mother's physical custody between 1998 and 2001, and prior to her eighteenth birthday.

Nevertheless, the AAO finds that the evidence in the record fails to establish that the applicant resided in the legal custody of her mother on February 27, 2001, or thereafter, and prior to her eighteenth birthday, as required by section 320 of the Act.

Legal custody vests "by virtue of either a natural right or a court decree". See *Matter of Harris*, 15 I&N Dec. 39 (BIA 1970). 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).

In the present matter, the record reflects that the applicant's father obtained a judicial grant of custody over the applicant. The divorce decree obtained by the applicant's father on February 3, 1995, reflects that the applicant's father was awarded custody over the applicant, and that any issues of custody were reserved for future determination by the court. The record contains no evidence to establish that the applicant's mother obtained an amended court order awarding her legal custody over the applicant. The AAO therefore finds that the applicant has failed to establish that she resided in the legal custody of her U.S. citizen mother, as set forth in section 322(a)(4) of the Act.

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 applicant has not met her burden. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.