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U.S. Citizenship
and Immigration
Services

A large, stylized handwritten signature in black ink, appearing to be "EJ".

FILE:

Office: NEW YORK, NY

Date: OCT 28 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 be "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

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

The record reflects that the applicant was born in Russia on January 25, 1996. At birth, the applicant's name was [REDACTED]. The applicant was adopted on May 5, 1997, by [REDACTED]. Pursuant to his adoption, the applicant's name was changed to [REDACTED]. On June 14, 1997, the applicant was admitted into the United States as a lawful permanent resident under the name [REDACTED]. 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 determined that the applicant had failed to comply with requests for birth certificate information and for evidence that [REDACTED] was physically present in Russia prior to the applicant's entry into the United States. On this basis, the application was denied for lack of prosecution.

On appeal, the applicant asserts, through his father, that he has provided birth certificate information. The applicant asserts further that he is submitting photos establishing that [REDACTED] was in Russian prior to his adoption.

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.
- (b) Subsection (a) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

Section 101(b)(1)(E) of the Act, 8 U.S.C. § 1101(b)(1) states in pertinent part that the term "child" means an unmarried person under twenty-one years of age who is:

[A] child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years

The AAO notes that the two-year residence requirement set forth in section 101(b)(1)(E) of the Act may be satisfied either before or after an adoption. *See Matter of Repuyan*, 19 I&N Dec. 119, 120 (BIA 1984). The AAO notes further that 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).

The record contains a May 5, 1997, Russian Court Judgment decreeing [REDACTED] adoption of [REDACTED], born in Ulan-Ude, Russia on January 25, 1996. The court judgment decrees further that [REDACTED] birth record (number 687, made on April 29, 1996, by the Vital Records

Department of Oktyabrskiy district of Ulan-Ude) be changed to reflect a new name, [REDACTED] and to reflect that [REDACTED] is his father. The record contains a Russian birth certificate reflecting that [REDACTED] was born in Ulan-Ude, Buryatia, Russia on January 25, 1996, and that his father is [REDACTED] a U.S. citizen. The record additionally contains an approved Form I-600, Petition to Classify Orphan as an Immediate Relative (I-600 Petition) filed by [REDACTED]. The I-600 petition states in its Biographic Data section [REDACTED] adoptive child's name is [REDACTED]", and that the child was known by the name [REDACTED] at birth. In addition, the record contains an approved family-based immigrant visa for the applicant reflecting that he was admitted into the United States as a lawful permanent resident on June 14, 1997, under the name, [REDACTED]. Both the applicant's I-600 petition and his U.S. immigrant visa reflect that [REDACTED] was born in Ulan Ude, Russia on January 25, 1996.

The AAO finds that the adoption proceeding, birth certificate, I-600 petition, and immigrant visa information contained in the record establish that the applicant was adopted at the age of one by [REDACTED] that his name was legally changed to [REDACTED], and that his immigrant visa was issued under the name [REDACTED]. The AAO finds further that the evidence contained in the record establishes that the applicant was admitted into the United States as a lawful permanent resident on June 14, 1997, at the age of one, and that he has resided in the legal and physical custody of his adoptive father, [REDACTED] in New York since the date of his entry into the United States. Furthermore, the AAO finds that the record contains U.S. birth certificate evidence establishing that [REDACTED] was born in Ohio on February 27, 1951, and that he is a U.S. citizen.

Based on the above findings, the AAO finds the applicant has established that he meets the requirements for citizenship under section 320 of the Act. The appeal will therefore be sustained.

ORDER: The appeal is sustained.