



U.S. Citizenship
and Immigration
Services

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FILE:

Office: MIAMI, FLORIDA

Date: AUG 09 2006

IN RE:

Applicant:



APPLICATION: Application for Certificate of Citizenship under § 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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Miami, Florida, 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 Haiti on November 18, 1987. The applicant's father became a naturalized U.S. citizen in 1999, when the applicant was under eighteen years of age. The applicant's mother is not a U.S. citizen. The applicant's parents were married but obtained a divorce in February 1997. The applicant was admitted into the United States as a lawful permanent resident in December 1987 when he was an infant. He seeks a certificate of citizenship under § 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431 by virtue of his father's naturalization.

The district director concluded that the applicant had failed to establish that he resided in the United States in the legal and physical custody of his U.S. citizen parent, as required by § 320 of the Act. The application was denied accordingly. On appeal, the applicant asserts that his mother forfeited legal custody to his father, as evidenced by the submitted court-recognized declaration dated April 11, 2001. The applicant also asserts that he resides in his father's physical custody, despite the fact that he has not been living with his father, according to the submitted school letter.

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 had not yet reached their eighteenth birthdays as of February 27, 2001. Because the applicant was thirteen years old on February 27, 2001, he 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 1987, and that the applicant's father became a naturalized U.S. citizen in 1999. 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 § 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). The record contains a sworn statement dated July 28, 2003, executed by the applicant, who stated that he lived with his grandmother in Haiti. The applicant's father also executed a sworn statement on the same date in which he indicated that the applicant lived in Haiti but spent school vacations with him in the United States. The applicant's father also stated that the applicant was to complete the twelfth grade the following year (2004) in the United States.

A letter dated December 10, 2003 written by the director of the New American School in Port au Prince, Haiti, states that the applicant had been a student at that school for the previous five years, and that he had

been living at a boarding house. The record also includes a letter of the same date written by the director of admissions of Archbishop Curley – Notre Dame High School, reporting that the applicant was a registered student who was accepted into the eleventh grade at that Miami school. The letter from Notre Dame High School in Miami does not establish that the applicant resides in his father's physical custody, and the letter from the New American School indicates that the applicant was living outside his father's physical custody in Haiti. The AAO finds that the applicant has failed to establish that he resided in his father's physical custody prior to his eighteenth birthday on November 18, 2005.

Regarding the question of legal custody, the applicant asserts that his mother gave up her custodial rights in 2001, and that the custodial change was recognized by the court of the justice of the peace in Port au Prince. It is noted that the court document submitted, originally written in French, lacks diacritic marks, which the French language requires and are included on typewriters and computers used to produce documents in French. Therefore, the document proffered appears not to have been produced in Haiti by the court clerk, and it is of questionable probative value.

The AAO finds that the applicant has failed to establish that he resided in the legal and physical custody of his U.S. citizen father, as set forth in § 320(a)(3) of the Act. For this reason, the applicant is not eligible for a certificate of citizenship pursuant to § 320 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 that burden. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.