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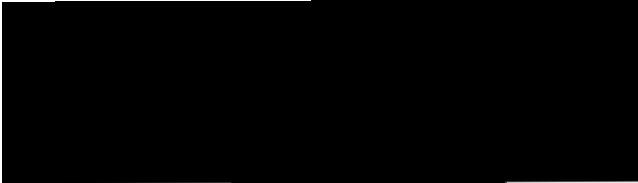
U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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FILE:



Office: PHILADELPHIA, PENNSYLVANIA

Date: **MAR 20 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.

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, Philadelphia, Pennsylvania, 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 Cambodia on July 8, 1986. The applicant's mother became a naturalized U.S. citizen on April 28, 2004, when the applicant was seventeen years old. The applicant's father is not a U.S. citizen. The record reflects that the applicant's parents were married to each other but later divorced on November 4, 1996. The applicant was admitted into the United States as a lawful permanent resident on November 26, 2001 when he was fifteen years old. The applicant has applied for a certificate of citizenship under § 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 he resided in the U.S. in the legal 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 although the divorce decree between his parents awards legal custody to his father, the applicant's mother assumed legal custody prior to his eighteenth birthday. In support of this claim the applicant submits a declaration his father made at a local police station in Cambodia on May 11, 2004.

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 fourteen 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 and his mother became a naturalized U.S. citizen prior to the applicant's eighteenth birthday. The applicant therefore meets the requirements set forth in subsections (a)(1) and (a)(2) of § 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 indicates that the applicant resided in his mother's physical custody in the United States prior to his eighteenth birthday. Nevertheless, the AAO finds that the evidence in the record fails to establish that the applicant resided in the legal custody of his mother on February 27, 2001, or thereafter, and prior to his eighteenth birthday, as required by § 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 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 reflects that the applicant's

father was awarded custody over the applicant, and there is no evidence that the applicant's mother obtained an amended court order awarding her legal custody over the applicant. The applicant's father's declaration at the police station giving over custody to the applicant's mother does not constitute an amendment to the court order. The AAO therefore finds that the applicant has failed to establish that he resided in the legal custody of his U.S. citizen mother, as set forth in § 320(a)(3) 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.