

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

E2

APR 18 2007

FILE:

Office: NEW YORK, NY

Date:

IN RE:

Applicant:

APPLICATION:

Application for Certificate of Citizenship under section 320 of the former 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, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the application approved.

The record reflects that the applicant was born on November 14, 1986, in the Dominican Republic. The applicant's father, [REDACTED], was born in the Dominican Republic, and he became a naturalized U.S. citizen on September 16, 2002, when the applicant was fifteen years old. The applicant's mother, [REDACTED], was born in the Dominican Republic. She is not a U.S. citizen. The record reflects that the applicant's parents did not marry. The applicant was admitted into the United States as a lawful permanent resident on June 19, 2004, when he was seventeen years old. The applicant presently 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 establish that he resided in the physical custody of his U.S. citizen father as required by section 320(a)(3) of the Act. The application was denied accordingly.

On appeal, the applicant asserts that previous and newly submitted evidence establishes that he has lived in the legal and physical custody of his father since his June 19, 2004 admission into the United States.

Section 320(a) of the Act allows a child born outside of the United States to automatically become a citizen of the United States upon fulfillment of the following conditions:

- (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.

Section 101(c) of the Act, 8 U.S.C. § 1101(c), defines "child" for citizenship purposes, and states in pertinent part:

The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere, and except as otherwise provided in section 320, and 321 of title III, a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

The record reflects that the applicant's parents did not marry. The applicant must therefore establish that prior to his sixteenth birthday, he was legitimated under the law of his, or his father's residence or domicile.

The Board of Immigration Appeals (Board) stated in *Matter of Cabrera*, 21 I&N Dec. 589, 592 (BIA 1996), that a child residing or domiciled in the Dominican Republic may qualify as a legitimated child once his or her father acknowledges paternity in accordance with Dominican law. Article 21 of the [Dominican] Code for the Protection of Children, which relates to proof of filiation, states that "[s]ons and daughters born out of wedlock may be acknowledged individually by their father either when the birth occurs, or by means of a will, or by a public instrument." See *Matter of Cabrera*, *supra*, at FN 1. In the present matter, the applicant's birth certificate reflects

that [REDACTED] is the applicant's father. The applicant's father therefore acknowledged the applicant as his child at the time of the applicant's birth. Accordingly, the applicant established that he was legitimated at birth by his father pursuant to the law in the Dominican Republic (the applicant's and his father's place of residence or domicile.)

The Board held in *Matter of Rivers*, 17 I&N Dec. 419, 422-23 (BIA 1980), that a natural father is presumed to have legal custody of his child at the time of legitimation in the absence of affirmative evidence indicating otherwise. The present record contains no evidence to indicate that the applicant's father was divested of his natural right to legal custody over this child. Moreover, the record contains a November 5, 2004, Dominican Republic, Coat of Arms judicial order, granting legal custody and legal guardianship of the applicant to his father. The applicant has thus established that he was in the legal custody of his father at the time of his legitimation and prior to his sixteenth birthday, as required by section 101(c) of the Act. He therefore meets the definition of "child" as set forth in section 101(c) of the Act. The AAO finds that the applicant also established that at the time of his admission into the United States as a lawful permanent resident on June 19, 2004, his father had legal custody over him for purposes of section 320(a)(3) of the Act.

The AAO notes that the Dominican Republic judicial order contained in the record additionally reflects the applicant's parents' statements that the applicant began living with his father in the United States around June 2004. The AAO finds that the evidence contained in the record supports this information. The U.S. immigrant petition filed on the applicant's behalf reflects that the applicant intended to reside with his father at [REDACTED] in the Bronx, New York upon admission to the United States. Federal tax and employment evidence corroborate the claim that the applicant's father lived at the [REDACTED] address prior to the applicant's June 19, 2004, admission into the United States. Subsequent federal tax, State vehicle registration, and utility bill evidence contained in the record reflects that after the applicant's admission into the United States, the applicant's father moved to a new address at [REDACTED] in the Bronx, New York, and the record contains school registration, school report, and Selective Service System information for the applicant which establishes that the applicant lived with his father at the [REDACTED] address subsequent to his admission into the United State, and prior to his eighteenth birthday.

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. Under the preponderance of evidence standard, it is generally sufficient that the proof establish that something is probably true. See *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989). Based on the evidence contained in the record, the AAO finds that the applicant has established by a preponderance of the evidence that he resided in the physical custody of his father subsequent to his admission into the United States on June 19, 2004. The applicant has additionally established that prior to his eighteenth birthday on November 14, 2004, he satisfied all of the section 320 of the Act requirements for automatic vesting of his U.S. citizenship. The record reflects that the applicant's father became a naturalized U.S. citizen on September 6, 2002, and the record reflects that after June 19, 2004, the applicant resided in the United States in the legal and physical custody of his father pursuant to a lawful admission for permanent residence. The applicant has thus met his burden of proof in the present matter. The appeal will therefore be sustained, and the application approved.

**ORDER:** The appeal is sustained. The application is approved.