



U.S. Citizenship  
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FILE: [REDACTED] Office: SAN FRANCISCO, CA Date: **AUG 29 2007**

IN RE: Applicant: [REDACTED]

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 read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on February 2, 1989 in South Africa. The applicant's parents, as reflected in her birth certificate, are [REDACTED] and [REDACTED]. The applicant's parents were married in 1985, and divorced in 1994. The applicant's father became a naturalized U.S. citizen on August 6, 2002. The applicant was admitted to the United States as a lawful permanent resident on April 28, 2006. The applicant turned 18 years old on February 2, 2007. The applicant seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, based on the claim that she acquired U.S. citizenship through her father.

The district director concluded, in relevant part, that the applicant had failed to establish that she was in the legal custody of her U.S. citizen father as required by section 320 of the Act. The application was denied accordingly.

On appeal, the applicant's father contends that the law in South Africa provides for joint guardianship and that, as such, he has legal custody of the applicant by operation of law. In support, the applicant's father cites the Guardianship Act of 1993 and a letter from a South African law firm. The applicant's father maintains that "guardianship" in South Africa is the equivalent of "legal custody," whereas "custody" refers to "physical custody." *See* Letter from Applicant's Father dated April 17, 2007.

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 18th birthdays as of February 27, 2001. Because the applicant was under 18 years old on February 27, 2001, she meets the age requirement for benefits under the CCA.

Section 320 of the Act, 8 U.S.C. § 1431, 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 to the United States as a lawful permanent resident in 2006, and that the applicant's father is a naturalized U.S. citizen since 2002. The applicant turned 18 years old on February 2, 2007. The record contains evidence indicating that the applicant was in her father's physical custody. Nevertheless, the applicant's parents' divorce decree clearly indicates that custody of the applicant was awarded to the applicant's mother. The AAO has considered the explanation provided by the law firm and the copy of the Guardianship Act of 1993. These documents do not support the applicant's father's statement that "custody" in the divorce decree refers only to "physical custody"

and not “legal custody.” The AAO notes that section 1(2) of Guardianship Act of 1993 specifically refers to court ordered guardianship. The AAO also notes that the documents provided do not support the claim that the custody order included in the divorce decree can be modified by a letter or affidavit by the applicant’s mother granting permission to the applicant’s father to pursue U.S. citizenship on the applicant’s behalf. As such, the AAO finds that the applicant has failed to establish that her father was awarded legal custody subsequent to the divorce as required by subsection (a)(3) of section 320 of the Act, 8 U.S.C. § 1431(a)(3).

The AAO notes that, as is well established, “[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship.” *Fedorenko v United States*, 449 U.S. 490, 506 (1981). The applicant in the present case has not established that she was in the legal custody of her father. Accordingly, the AAO finds that she did not acquire citizenship pursuant to the section 320 of the Act, 8 U.S.C. § 1431.

8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant in the present case has not met her burden and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.