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U.S. Citizenship  
and Immigration  
Services

*E2*

FILE:

OFFICE: ANCHORAGE, AK

DATE: JUN 08 2007

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 read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

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

The applicant was born in the Philippines on November 7, 1988. He turned eighteen on November 7, 2006. The applicant's father, [REDACTED], was born in the Philippines, and he became a naturalized U.S. citizen on September 26, 2002, when the applicant was thirteen years old. The applicant's mother is not a U.S. citizen. The applicant's parents married in the Philippines on July 30, 1983. They obtained a divorce in Guam on December 28, 1995, when the applicant was seven years old. The applicant was admitted into the United States as a lawful permanent resident on May 12, 2002, when he was thirteen years old. He 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 concluded that the applicant was ineligible for citizenship under section 320 of the Act because he failed to establish that prior to his eighteenth birthday, he resided in the United States in the custody of his U.S. citizen father. The application was denied accordingly.

On appeal, the applicant asserts that he presently lives with his father, and that he has lived with his father since his arrival in Alaska. The applicant submits a copy of his and his father's apartment lease agreement as evidence of his U.S. residence with his father.

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 contains a U.S. Certificate of Naturalization reflecting that the applicant's father [REDACTED] became a naturalized U.S. citizen on September 26, 2002, prior to the applicant's eighteenth birthday. The applicant therefore meets the requirement set forth in section 320(a)(1) of the Act. The record additionally contains U.S. immigration documents reflecting that the applicant became a U.S. lawful permanent resident on May 12, 2002, prior to his eighteenth birthday, as set forth in section 320(a)(3) of the Act. The AAO finds, however, that the evidence in the record fails to establish that the applicant resided in the U.S. in the legal and physical custody of his U.S. citizen father, prior to his eighteenth birthday.

Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33) provides that, "[t]he term 'residence' means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent."

The record contains the following evidence relating to the applicant's residence during the requisite time period:

A copy of the applicant's passport, valid November 7, 2001 through November 7, 2006, containing the following admissions and departure information:

Arrived in Guam 6/22/03;  
Arrived in the Philippines 7/4/03;  
Departed the Philippines 4/19/05;  
Arrived in Guam 4/19/05;  
Arrived in the Philippines 5/1/05;  
Departed the Philippines 4/11/06.

4/06 – 10/06, Federal Credit Union bank account information reflecting that the applicant and his father had a joint bank account, and listing their address as [REDACTED] in Anchorage, Alaska.

Philippine school transcripts reflecting that the applicant attended school in the Philippines during the 2000-2001; 2004-2005; and 2005-2006 school years.

A letter from the Office of the Registrar, STI College, Bacoor, in the Philippines reflecting that the college granted the applicant permission to transfer effective November 2, 2006.

An apartment lease, signed by the applicant and his father on December 28, 2006, reflecting that the applicant and his father rented an apartment together at [REDACTED] in Anchorage, Alaska.

The regulation provides at 8 C.F.R. § 341.2(c) that the burden of proof shall be on the claimant to establish his or her 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. *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989.)

Upon review of the evidence, the AAO finds that the applicant established by a preponderance of the evidence that he resided with his father in Alaska after December 2006. The AAO notes that the joint bank account evidence contained in the record does not, in and of itself, establish that the applicant resided in the custody of his father in Alaska between the bank statement periods of April and October 2006. The AAO notes further that the applicant's passport contains no travel information after April 11, 2006. The passport lacks information regarding where the applicant was admitted after he departed the Philippines on April 11, 2006. The passport additionally contains no evidence to indicate when the applicant was admitted into the United States or to indicate that he was admitted into the U.S. in April 2006. Moreover, the school transcript and transfer evidence contained in the record indicates that the applicant completed the 2006 school year in the Philippines and that he resided in the Philippines through at least November 2006. Accordingly, the applicant failed to establish by a preponderance of the evidence that he resided in the U.S. in the physical custody of his father prior to his eighteenth birthday.

The AAO finds that the applicant also failed to establish that he was in the legal custody of his father after his parents' divorce, and prior to his eighteenth birthday. The record contains a Superior Court of Guam, Territory of Guam, Final Decree of Divorce reflecting that the applicant's parents were legally divorced on December 28, 1995. The divorce decree does not mention or address the issue of legal custody over the applicant. The Board of Immigration Appeals held in *Matter of Harris*, 15 I&N Dec. 39 (BIA 1970), that legal custody vests "by virtue of either a natural right or a court decree." In the absence of a judicial determination or grant of custody in a case of a legal separation of the naturalized parent, the parent having actual, uncontested custody of the child is to be regarded as having legal custody. *See Matter of M*, 3 I&N Dec. 850, 856 (BIA 1950.) The applicant failed to establish that prior to his eighteenth birthday, he resided in the

United States in the physical or actual, uncontested custody of his father. Accordingly, the applicant has failed to establish that he meets the requirements for citizenship as set forth in section 320 of the Act. The appeal will therefore be dismissed, and the application will be denied.

**ORDER:** The appeal is dismissed and the application is denied. <sup>1</sup>

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<sup>1</sup> The present decision is without prejudice to the applicant's filing, if eligible, a Form N-400, Application for Naturalization under section 316 of the Act, 8 U.S.C. § 1427.