



U.S. Citizenship  
and Immigration  
Services

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FILE:

[REDACTED]

Office: MIAMI, FLORIDA

Date: JUN 26 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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the 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 on June 4, 1988 in the Dominican Republic. The applicant's parents are [REDACTED] and [REDACTED]. The applicant's parents were married in 1987 and divorced in 1990. The applicant's mother was born in Boston, Massachusetts in 1961 and is a U.S. citizen. The applicant became a lawful permanent resident on April 1, 1996, when she was seven years old. 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 mother.<sup>1</sup>

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 mother, as required by section 320 of the Act. The application was denied accordingly.

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 12 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 1996, and that the applicant's mother is a native U.S. citizen. The applicant turned 18 years old on April 1, 2006. The record contains evidence indicating that the applicant was in her mother's physical custody. Nevertheless, there is no evidence to establish that the applicant's mother had been awarded legal custody subsequent to the applicant's parents' divorce as required by subsection (a)(3) of section 320 of the Act, 8 U.S.C. § 1431(a)(3).

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). Where the parents were never married, the mother is presumed to retain legal custody by

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<sup>1</sup> The applicant did not acquire U.S. citizenship at birth pursuant to section 301(g) of the Act, 8 U.S.C. § 1401(g), because the applicant's mother was not physically present in the United States for the required period prior to the applicant's birth. *See* Affidavit of [REDACTED] dates January 25, 2005.

natural right. *Id.* at 41. Where, as here, the applicant's parents were married, the applicant must present a copy of a court document, such as a divorce decree, legal separation, or custody order, indicating which parent was awarded legal custody. The applicant has submitted a copy of a divorce decree. The AAO notes that the documents in the record are in the Spanish language, and that translations are not provided. The AAO nevertheless notes that the documents in the record do not appear to address the issue of the applicant's custody. The record does not contain any evidence that the applicant's mother was awarded legal custody of the applicant.

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 mother. 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.