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**U.S. Citizenship
and Immigration
Services**

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[Redacted]

FILE: [Redacted] Office: NEW YORK, NY

Date: **NOV 27 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:

[Redacted]

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, and is now before the Administrative Appeals Office (AAO) on appeal. The director's decision is withdrawn and the matter remanded to the director for further action consistent with this decision.

The record reflects that the applicant was born on October 23, 1989 in the Dominican Republic. The applicant's parents, as reflected in his birth certificate, are [REDACTED] and [REDACTED]. The applicant's parents were married on January 31, 2006, when the applicant was 16 years old. The applicant's father became a naturalized U.S. citizen on November 18, 2005, when the applicant was 16 years old. The applicant was admitted to the United States as a lawful permanent resident on May 21, 1996, when the applicant 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 he acquired U.S. citizenship through his father.

The district director concluded, in relevant part, that the applicant had failed to establish that he was in the physical custody of his U.S. citizen father as required by section 320 of the Act. The district director found that the applicant's father was residing in New York, while the applicant resided in Rhode Island with his aunt and uncle. The application was denied accordingly.

On appeal, the applicant cites section 322 of the Act, 8 U.S.C. § 1433, and argues that the district director's decision should be reconsidered. In support of his appeal, the applicant submits his father's income tax returns for the years 2000 and 2003, listing the applicant as a dependent.

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. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Because the applicant was under 18 years old on February 27, 2001, he 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.

Section 322 of the Act, 8 U.S.C. § 1433, governs citizenship claims by applicants residing outside the United States. Because the applicant is a lawful permanent resident of the United States, section 322 of the Act is inapplicable to the present matter.

The record reflects that the applicant was admitted to the United States as a lawful permanent resident in 1996, and that the applicant's father has been a naturalized U.S. citizen since 2005. The record further indicates that the applicant's parents were married in 2006. The record contains evidence indicating that the applicant resided with his aunt and uncle in Rhode Island, where he attended high school. The applicant's father resides in New York. The AAO notes that the applicant is listed as a dependent on his father's income tax returns for the years 2000 and 2003. The AAO further notes that the 2000 income tax return indicates that the applicant's father was married to [REDACTED]. The 2003 income tax return lists the applicant's father as single. The record also contains a letter signed by the applicant's father in 2004 authorizing his brother and sister-in-law to act as guardians to the applicant. There is also a notarized statement signed by the applicant's aunt and uncle in 2006 indicating that the applicant attends school in Rhode Island, but that he is supported and cared for by his father. The AAO notes that the applicant has obtained a U.S. passport.

It is well-established that a valid U.S. passport constitutes conclusive proof of a person's U.S. citizenship and may not be collaterally attacked. *Matter of Villanueva*, 19 I&N Dec. 101 (BIA 1984). Nevertheless, the regulations require an applicant for a certificate of citizenship to submit "documentary and other evidence essential to establish the claimed citizenship." 8 C.F.R. § 341.1. In the present case, the applicant has not provided the documentation necessary to issue a certificate of citizenship because, among other things, USCIS cannot determine the date when citizenship was acquired.

In order to automatically acquire U.S. citizenship under section 320 of the Act, 8 U.S.C. § 1431, the applicant must establish that while he was under the age of 18, he had a U.S. citizen parent, he was admitted to the United States as a lawful permanent resident, and he lived in the legal and physical custody of his U.S. citizen parent. The immigration regulations state, in relevant part, that USCIS "will presume that a US. citizen parent has legal custody of a child . . . absent evidence to the contrary, in the case of: (i) a biological child who currently resides with both natural parents (who are married to each other, living in marital union, and not separated." 8 C.F.R. § 320.1. The regulations further state that legal custody will also be presumed "in the case of a biological child born out of wedlock who has been legitimated and currently resides with the natural parent." *Id.* The term physical custody is not defined in the regulations.

Legal custody cannot be presumed in this case as there is evidence that the applicant was not residing with his father. The evidence in the record suggests that the applicant's father and mother reside in New York, while he resides in Rhode Island. It appears further that his father alone allowed his brother and sister-in-law to act as guardians to the applicant. The AAO notes that there is no letter or explanation from, or documentation relating to the applicant's mother. The AAO further notes that it appears that the applicant was born out-of-wedlock, but that his biological parents were married in 2006.

Because the director's decision failed to address the issue of legal custody or legitimation, or investigate the reason for the applicant's residence in Rhode Island, the AAO finds it necessary to remand the present matter to the director for a new decision. Upon remand, the district director must investigate whether the applicant's parents were married at the time of the applicant's birth and, if not, whether the applicant was legitimated by

his father. Further, the district director should consider whether the applicant resided in Rhode Island to attend school, while remaining in his father's physical custody. The district director must make a determination with respect to legal and physical custody, particularly between the date of the applicant's father's naturalization and the applicant's 18th birthday. If the new decision is adverse to the applicant, the decision shall be certified to the AAO for review.

ORDER: The director's decision is withdrawn and the matter remanded to the director for further action consistent with the present decision.