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U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEW YORK, NY

Date:

NOV 27 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:



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 cursive script, appearing to read "Robert P. Wiemann".

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.

The record reflects that the applicant was born on December 20, 1986 in Italy. The applicant's parents are Enrico and Tiziana Testa. The applicant's parents were married in Italy on March 27, 1976. The applicant's father became a U.S. citizen upon his naturalization on October 1, 2004, when the applicant was 17 years old. The applicant was admitted to the United States as a lawful permanent resident on January 30, 1999, when he was 12 years old. The applicant presently seeks a certificate of citizenship claiming that he acquired U.S. citizenship from his father pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The district director denied the citizenship claim upon finding that the applicant was not in his father's physical custody. The application was denied accordingly.

On appeal, the applicant, through counsel, states that his father maintained physical custody while he was studying in Italy. The applicant thus claims he acquired U.S. citizenship upon his father's naturalization. Further, the applicant claims his application must be granted because he holds a valid 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. Such evidence is required because, among other things, it is necessary for CIS to determine the date when citizenship was acquired.

Section 320 of the Act, 8 U.S.C. § 1431, was amended by the Child Citizenship Act of 2000 (the CCA). The amendments took effect on February 27, 2001 and apply only to persons who were not yet 18 years old as of February 27, 2001. Because the applicant was under the age of 18 on February 27, 2001, he is eligible for the benefits of section 320 of the amended Act. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

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.

(b) Subsection (a) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

The applicant in this case has established that he was admitted as a lawful permanent resident of the United States and that his father naturalized prior to his 18th birthday. The AAO also finds that the applicant was in the legal custody of his father, given that the applicant's parents were and remained married. *See* 8 C.F.R. § 320.1. The AAO further finds that the applicant remained in his father's physical custody during his years studying abroad. Ample evidence in the record establishes that the applicant's father provided support and guidance, and remained involved, during the applicant's temporary separation. The record indicates that the applicant's separation was due to his enrollment in a boarding school. The applicant was physically separated from his parents only while attending boarding school, but his residence continued to be in New York with his parents. Therefore, the AAO finds that the applicant has established that he acquired U.S. citizenship automatically upon his father's naturalization.

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. In order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is "probably true" or "more likely than not." *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). The AAO concludes that the applicant has met his burden to establish, by a preponderance of the evidence, that he acquired U.S. citizenship upon his father's naturalization. The appeal will therefore be sustained.

ORDER: The appeal is sustained.