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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:

Office: LOS ANGELES, CA

Date:

OCT 31 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, Los Angeles, 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 June 7, 1991 in Mexico. The applicant's parents, as reflected in his birth certificate, are [REDACTED]. The applicant's parents were never married. The applicant's father became a naturalized U.S. citizen in 2001, when the applicant was 10 years old. The applicant's mother's citizenship and residence are unknown. The applicant was admitted to the United States as a lawful permanent resident on December 20, 2006, when the applicant was 15 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 Huntington Park, California, while the applicant resides in Pomona, California with his aunt. The application was denied accordingly.

On appeal, the applicant's father contends that he indicated that he uses his Huntington Park address for business purposes only, although he also sleeps there after late performances. He maintains that he lives with his sister and the applicant in Pomona. In support of the appeal, the applicant's father submits an interim driver's license and a cell phone bill listing the Pomona address.

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, 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.

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 2001. The record contains evidence indicating that the applicant has resided with his aunt in Pomona since May 2000. The record further contains evidence that the applicant's father has resided in Huntington Park since January 1997. Specifically, the AAO notes the Forms G-325, Biographical Information, submitted by the applicant and his father in connection with the applicant's adjustment of status application. The AAO further notes the income tax

returns and immigration forms listing the applicant's father's residence in Huntington Park, and the applicant's in Pomona. It is at best unclear whether the applicant's father's Huntington Park address is a mailing address or his actual residence. As such, the AAO finds that the applicant has failed to establish, by a preponderance of the evidence, that he is in the physical custody of his U.S. citizen father 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). 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 U.S. Supreme Court has further stated "it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect. This Court has often stated that doubts 'should be resolved in favor of the United States and against the claimant.'" *Berenyi v. District Director*, 385 U.S. 630, 671 (1967)(citation omitted). The applicant in the present case has not established that he is in the physical custody of his U.S. citizen father. Accordingly, the AAO finds that he did not acquire citizenship pursuant to the section 320 of the Act, 8 U.S.C. § 1431 and the appeal will be dismissed.

ORDER: The appeal is dismissed.