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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: APR 07 2008

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Form N-600, Application for Certificate of Citizenship (N-600 application) was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the N-600 application will be approved.

The applicant was born on August 10, 1997, in Mexico. He will turn eighteen on August 10, 2015. The applicant's father, [REDACTED], was born in Pakistan, and he became a naturalized U.S. citizen on May 26, 1995, prior to the applicant's birth. The applicant's mother, [REDACTED] was born in Mexico. She is not a U.S. citizen. The record reflects that the applicant's parents did not marry. The applicant was admitted into the United States as a lawful permanent resident on May 16, 2005, when he was seven years old. The applicant presently seeks a certificate of citizenship based on the claim that he derived U.S. citizenship through his father.

The director determined that in spite of U.S. Citizenship and Immigration Services (CIS) requests for further evidence, the applicant had failed to submit evidence establishing that his father had legal custody over the applicant. The director determined that the applicant therefore failed to demonstrate that he qualified for consideration of his citizenship claim under section 321 of the former Immigration and Nationality Act (the Former Act), 8 U.S.C. § 1432, or sections 320, 322, 309, and 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1431, 1433, 1409 and 1401(g). The N-600 application was denied without analysis of the applicant's citizenship claim under any of the cited statutory provisions.

On appeal the applicant asserts, through his father, that he did not receive the CIS request for further evidence, and the applicant indicates that evidence contained in the record establishes that his father has legal custody over him, and that his N-600 application should be approved.

Section 320 of the Act, 8 U.S.C. § 1431, allows a child born outside of the United States to automatically become a citizen of the United States upon fulfillment of the following conditions:

- (a) (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 AAO notes that paternity is not an issue in the present matter. The applicant's birth certificate clearly reflects that [REDACTED] is the applicant's father. The record additionally contains a December 2000, paternity petition filed by the State of Arizona, on behalf of the applicant's mother, containing genetic testing results demonstrating a 99.99% probability of [REDACTED]'s paternity over the applicant. The record also contains an August 23, 2003, Order from the Superior Court in Yuma, Arizona reflecting that [REDACTED] is the applicant's father. The applicant has therefore established that [REDACTED] is his natural father.

Section 101(c) of the Act, 8 U.S.C. § 1101(c), defines the term, "child" for citizenship purposes, and states in pertinent part that:

The term “child” means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child’s residence or domicile, or under the law of the father’s residence or domicile, whether in the United States or elsewhere. . . if such legitimation . . . takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating . . . parent or parents at the time of such legitimation.

...

The record reflects that the applicant’s parents did not marry. The applicant must therefore establish that prior to his sixteenth birthday, he was legitimated under the law of his, or his father’s residence or domicile – in this case, Mexico or Arizona.

The Mexican Civil Code provides at Articles 3 and 4, that official registration and acknowledgment of a child establish paternity over a child born out of wedlock. Under Article 130 of the Mexican Constitution, however, a child born out of wedlock becomes legitimated only upon the civil marriage of his or her parents. *Matter of M-D-*, 3 I&N Dec. 485 (BIA 1949). *See also, Matter of Hernandez*, 14 I&N Dec. 608 (BIA 1974) and *Matter of Rodriguez-Cruz*, 18 I&N Dec. 72 (BIA 1981). The applicant has failed to establish that his parents have married. Accordingly, the applicant has not been legitimated by his father pursuant to the laws in Mexico.

Arizona Revised Statutes (ARS) section 8-601 provides that, “[e]very child is the legitimate child of its natural parents and is entitled to support and education as if born in lawful wedlock.” There is thus no legal difference under Arizona law, between a child born in, or out, of wedlock. Accordingly, the AAO finds that the applicant has established that at the time of his birth, he qualified as the legitimate child of Anwar Ali Jatoi pursuant to Arizona law.

The AAO finds further that the applicant established that he has been in the legal custody of his father since birth. The Board of Immigration Appeals (Board) held in *Matter of Rivers*, 17 I&N Dec. 419, 422-23 (BIA 1980), that a natural father is presumed to have legal custody over his child at the time of legitimation in the absence of affirmative evidence indicating otherwise. The present record contains no evidence to indicate that the applicant’s father was, at any point, divested of his natural right to legal custody over the applicant. Moreover, the record contains a Superior Court of Yuma, Arizona court order, formally awarding primary care, custody and control over the applicant to his father, [REDACTED] on August 21, 2003. The applicant therefore meets the definition of “child” as set forth in section 101(c) of the Act.

U.S. immigrant visa documentation, Arizona school transcripts, 2002 – 2004 Federal and State tax information, and the August 21, 2003, Superior Court of Yuma, Arizona court order awarding primary care, custody and control over the applicant to his father, additionally establish, by a preponderance of the evidence, that the applicant has lived in Arizona in the physical custody of his father since 2002.

The burden of proof shall be on the claimant to establish his claimed citizenship by a preponderance of the evidence. 8 C.F.R. § 341.2(c). The AAO finds, upon review of the evidence, that the applicant has established by a preponderance of the evidence that he meets the requirements for citizenship under section 320 of the Act. Birth certificate and certificate of naturalization evidence contained in the record establish that the applicant is under the age of eighteen and that his father is a U.S. citizen. The applicant has

additionally established that he was legitimated at birth by his father, and that his father has had legal custody over him since birth. Evidence in the record establishes further that the applicant resided in the U.S. in the physical custody of his father at the time of his lawful admission. for permanent residence on May 16, 2005. The applicant has therefore met the requirements for automatic vesting of U.S. citizenship under section 320 of the Act. The appeal will be sustained accordingly, and the N-600 application will be approved.<sup>1</sup>

**ORDER:** The appeal is sustained. The applicant is approved.

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<sup>1</sup> Because the applicant has established his eligibility for citizenship under section 320 of the Act, the AAO finds that it is unnecessary to analyze his eligibility for citizenship under other citizenship provisions contained in the former or amended Act.