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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE: [Redacted]

Office: NEW YORK, NY

Date: **APR 23 2008**

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The N-600, Application for Certificate of Citizenship (N-600 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 and the N-600 application will be approved.

The record reflects that the applicant was born in India on June 26, 1997. The applicant's father, [REDACTED] was born in India on January 24, 1965, and he became a naturalized U.S. citizen on May 8, 1997, prior to the applicant's birth. The applicant's mother was born in India and she is not a U.S. citizen. The applicant's parents married in India on September 22, 1996. The applicant was admitted into the United States as a lawful permanent resident on March 19, 2006, when she was six years old. The applicant presently seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. §1431.

In a decision dated September 15, 2006, the district director determined that the applicant was ineligible for citizenship under section 320 of the Act because she did not reside in the United States in the physical custody of her U.S. citizen father when her N-600 application was adjudicated. The application was denied accordingly.

On appeal the applicant asserts, through her father, that she presently lives with her citizen father and attends school in New York. The applicant indicates that she meets section 320 of the Act physical custody requirements, and she requests that her N-600 application be approved.

Section 320 of the Act provides 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 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33) provides that, "[t]he term "residence" means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent." In *Matter of Jalil*, 19 I&N Dec. 679 (BIA 1988), the Board of Immigration Appeals clarified further that the maintenance of financial interests, the retention of a house, or the intention to return does not establish a person's "dwelling place in fact" for purposes of section 101(a)(33) of the Act.

The applicant's N-600 application, address information contained in the applicant's U.S. immigrant visa petition, and information on the applicant's father's naturalization and marriage certificates reflect that the applicant's father's residence, for immigration purposes, is in New York.

The AAO finds that the evidence in the record additionally establishes that the applicant's principal, actual dwelling place in fact, without regard to intent, between March 19, 2006 (the date of her admission into the United States as a lawful permanent resident) and April 8, 2006 (the date of her return to India for school

purposes) was with her father in New York. The applicant's 2003 and 2004, U.S. immigrant visa documents reflect that the applicant's intended address was with her father in New York, and entry stamps contained in the applicant's passport reflect that she was admitted into the United States at New York, as an IR2 immigrant visa holder on March 19, 2006. Exit stamps contained in the applicant's passport reflect that the applicant remained in the U.S. until April 8, 2006, when she returned to India to complete her school year. Upon review of the evidence the AAO finds that the applicant has established by a preponderance of the evidence that she resided in the physical custody of her father in New York between March 19, 2006 and April 8, 2006.

Naturalization certificate evidence contained in the record establishes that the applicant's father became a naturalized U.S. citizen prior to the applicant's birth. The applicant's birth certificate evidence establishes further that the applicant is under the age of eighteen. The applicant additionally established that her father has legal custody over her, as her parents married in September 1996, prior to the applicant's birth, and her parents remain married. *See* 8 C.F.R. § 320.1. The AAO therefore finds that the applicant has demonstrated, by a preponderance of the evidence, that she resided in the United States in the physical custody of her father after her admission into the United States as a lawful permanent resident on March 19, 2006, and that she met all of the requirements for automatic vesting of U.S. citizenship at that time.

The regulation at 8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. The applicant has met her burden of proof in the present matter. The appeal will therefore be sustained and the application will be approved.

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