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U.S. Citizenship  
and Immigration  
Services

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PUBLIC COPY

FILE:

Office: MIAMI, FLORIDA

Date:

FEB 13 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.

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 Acting Director, Services, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on March 1, 1987 in Lima, Peru. The applicant's parents, as reflected on her birth certificate, are [REDACTED] and [REDACTED]. The applicant's parents were married in 1976 and divorced in 1998. The applicant's parents were naturalized on June 2, 1999 and July 29, 2002, respectively. The applicant was admitted to the United States as a lawful permanent resident on January 21, 1993. 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 she acquired U.S. citizenship through her father.

The acting director denied the application because the applicant failed to respond to a request for evidence, and therefore the director could not determine the applicant's eligibility for citizenship under section 320 of the Act, 8 U.S.C. § 1431.

On appeal, the applicant claims that she never received the request for evidence or appointment notice referenced in the acting director's decision. *See* Letters Accompanying Appeal, dated July 25, 2005.

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, she 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 1993, at the age of five, and that the applicant's parents were naturalized in 1999 and 2002, when the applicant was 12 and 15, respectively.

The record contains a copy of the applicant's parents' divorce decree indicating that they were divorced in 1998. Although a copy of the settlement agreement referenced in the divorce decree has not been submitted, the record suggests that the applicant's mother obtained custody of the applicant and that the applicant resided

in her physical custody upon the divorce. *See* Form N-600, Application for Certificate of Citizenship.<sup>1</sup>

The AAO thus finds that the applicant was in her mother's legal and physical custody and therefore automatically acquired U.S. citizenship on February 27, 2001, the effective date of the CCA.

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 applicant in the present case has met her burden. Accordingly, the AAO finds that the applicant acquired citizenship pursuant to the section 320 of the Act, 8 U.S.C. § 1431 and the appeal will be sustained.

**ORDER:** The appeal is sustained.

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<sup>1</sup> The AAO does not require the applicant to submit the settlement agreement in this case only because both her parents were naturalized prior to her 18<sup>th</sup> birthday, and the record includes sufficient evidence of her mother's custody to establish that the applicant acquired U.S. citizenship as of the CCA's effective date.