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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: NEW YORK, NY Date: **JAN 04 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 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 November 9, 1989 in the Dominican Republic. The applicant's parents are [REDACTED]. The applicant's parents were married in 1988, and divorced in 1990. The applicant's father became a U.S. citizen upon his naturalization on September 9, 2005, when the applicant was 15 years old. The applicant was admitted to the United States as a lawful permanent resident on September 18, 2004, when she was 14 years old. The applicant presently seeks a certificate of citizenship claiming that she acquired U.S. citizenship from her 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 her father's legal or physical custody. The application was denied accordingly.

On appeal, the applicant's father states that the applicant resided with him in 2005, in his physical and legal custody. The applicant's father submits documentary evidence of his residential address and a certified copy of a custody decree entered in the Dominican Republic.

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, she 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.

The applicant in this case has established that she was admitted as a lawful permanent resident of the United States and that her father naturalized prior to her 18th birthday. The record contains a copy of the applicant's parents' divorce decree, as well as a 2006 decree from Dominican Republic Judicial Power approving and ratifying the 1998 grant of custody and guardianship to the applicant's father. The record also contains ample evidence that the applicant and her father resided at [REDACTED] together.

The AAO therefore finds that the applicant has established that she was in her father's legal and physical custody when he naturalized in 2005. The applicant therefore automatically acquired U.S. citizenship under section 320 of the Act, 8 U.S.C. § 1431.

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 her burden to establish, by a preponderance of the evidence, that she acquired U.S. citizenship upon her father's naturalization. The appeal will therefore be sustained.

ORDER: The appeal is sustained.