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U.S. Citizenship
and Immigration
Services

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FILE:

Office: NEW YORK, NY

Date: JUL 08 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:

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, 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 June 25, 1993 in Yemen. The record reflects that her parents are [REDACTED] and [REDACTED]. The applicant's father became a U.S. citizen on August 23, 2001, when the applicant was 8 years old. The applicant was admitted to the United States as a lawful permanent resident on May 2, 2002, when she was 8 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, claiming that she acquired U.S. citizenship from her father.

The district director denied the applicant's citizenship claim finding that she was not residing in the physical custody of a U.S. citizen parent. The district director based her finding on inconsistencies noted with respect to the applicant's father's addresses. The application was denied accordingly.

On appeal, the applicant maintains that she resides with her parents. She explains her father's use of a Delaware driver's license and his business address. In support of her appeal, the applicant submits additional evidence such as bank and insurance statements, utility bills, a letter from her father's landlord, school records and business documents evidencing that she resides with her U.S. citizen father.

Section 320 of the Act, 8 U.S.C. § 1431, was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA benefits all persons who have not yet reached their eighteenth birthdays as of February 27, 2001. Because the applicant was under the age of 18 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.
- (b) Subsection (a) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

The AAO finds that the applicant has established, by a preponderance of the evidence, that she is under 18 years old, the child of a U.S. citizen, and residing in her U.S. citizen parent's legal and physical custody pursuant to a lawful admission for permanent residence. Specifically, the AAO concludes that the applicant resides with her father at their [REDACTED] address in Brooklyn, New York. In this regard, the AAO notes the additional evidence submitted by the applicant on appeal. The AAO concludes that the evidence in the record establishes that the applicant automatically acquired U.S. citizenship pursuant to section 320 of the Act.

The AAO further notes that the record contains a copy of the applicant's U.S. passport. In accordance with *Matter of Villanueva*, 19 I&N Dec. 101 (BIA 1984), a valid U.S. passport constitutes conclusive proof of a person's U.S. citizenship and may not be collaterally attacked.

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 has met her burden and the appeal will be sustained.

ORDER: The appeal is sustained.