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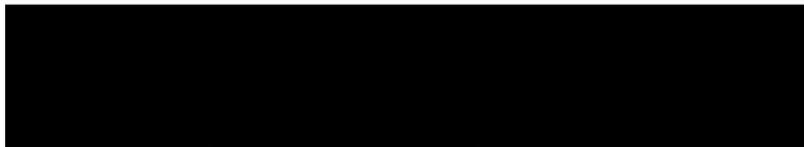
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

Office: NEW YORK, NY

Date:

JUN 03 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 District Director, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on February 12, 1990 in Serbia. The applicant's birth certificate reflects that her parents are [REDACTED] and [REDACTED]. The applicant's parents have never been married to each other. The applicant's father became a U.S. citizen upon his naturalization on December 4, 2003, when the applicant was 13 years old. The applicant was admitted to the United States as a lawful permanent resident on or about August 27, 2005, when she was 15 years old. The applicant seeks a certificate of citizenship pursuant to section 320 of the Immigration and Naturalization 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 after finding that she was not residing in the United States in the physical custody of a U.S. citizen parent. The district director's finding was based on evidence in the record indicating that the applicant was attending school in Serbia. The application was denied accordingly.

On appeal, the applicant's father submits a statement indicating that the applicant's absence from the United States was temporary. The applicant's father states that he accepted a job in Serbia and took the applicant with him. He further states that she was enrolled in school in Belgrade, but that she is now in the United States and will attend a local school. No documents accompany the appeal.

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.

The AAO notes at the outset that the applicant was born out of wedlock. Legal custody is presumed, in the case of a child born out of wedlock, only when the child has been legitimated and resides with the natural parent. See 8 C.F.R. § 320.1. Under *Matter of Pavlovic*, 17 I&N Dec. 407 (B.I.A. 1980), all legal distinctions between legitimate and illegitimate children were eliminated in Yugoslavia where paternity has been established (such as through acknowledgement by the father).

The AAO notes that the record contains a certificate issued by the City Center for Social Work in Belgrade, Serbia, indicating that the applicant has been residing with her natural parents, in their joint custody. The certificate suggests that the applicant was residing with both parents until 2002 and since 2005.¹ The record contains another certificate, issued by the Department of Administrative Affairs, indicating that the applicant resided with her mother in Belgrade on March 6, 2007.

The AAO finds that the record is, at best, unclear with respect to the question of whether the applicant was residing in the United States in her father's custody before her 18th birthday. The AAO notes that the applicant's father's statements, and the school records, indicate that the applicant was residing and enrolled in school in Belgrade from 2004 and until 2007. The record suggests that the applicant was residing in Serbia, not that she was temporarily absent as her father claimed.² There are no documents in the record suggesting that the applicant resided with her father upon her return to the United States in 2007.

The AAO notes "[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." *Fedorenko v United States*, 449 U.S. 490, 506 (1981). The U.S. Supreme Court has further stated "it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect. This Court has often stated that doubts 'should be resolved in favor of the United States and against the claimant.'" *Berenyi v. District Director*, 385 U.S. 630, 671 (1967). Pursuant to 8 C.F.R. § 341.2(c), 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 not met her burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ The applicant's father was married from June 29, 2002 until March 24, 2005, to someone other than the applicant's mother.

² The AAO notes the applicant's father's statement dated March 14, 2007, where he indicates that the applicant travelled to the United States during school breaks.