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U.S. Citizenship  
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Services

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FILE:  Office: NEW YORK, NY Date: **JUN 05 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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Form N-600, Application for Certificate of Citizenship (Form N-600) 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 and the Form N-600 will be denied.

The applicant was born in the Dominican Republic on July 5, 1989. She turned eighteen on July 5, 2007. The applicant's father, [REDACTED] was born in the Dominican Republic, and he became a naturalized U.S. citizen on April 29, 2005, when the applicant was fifteen years old. The applicant's mother was born in the Dominican Republic, and she is not a U.S. citizen. The record reflects that the applicant's parents divorced in the Dominican Republic on June 27, 1994. The applicant was admitted into the United States as a lawful permanent resident on July 21, 2006, when she was seventeen years old. She presently seeks a certificate of citizenship based on the claim that she derived U.S. citizenship through her father under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The district director determined the applicant had failed to establish that her U.S. citizen father had legal custody over her prior to the applicant's eighteenth birthday. The district director concluded that the applicant therefore did not meet the requirements for citizenship under section 320 of the Act, and the Form N-600 was denied.

On appeal, the applicant submits a legal custody amendment order, and she asserts that her father has legal custody over her. The applicant indicates that she is therefore eligible for derivative citizenship through her father.

Section 320 of the Act permits a child born outside of the U.S. to automatically become a citizen of the United States upon fulfillment of the following conditions:

- (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.

Legal custody vests "[b]y virtue of either a natural right or a court decree." *Matter of Harris*, 15 I&N Dec. 39 (BIA 1970.) In the absence of a judicial determination or grant of custody in a case of a legal separation of the naturalized parent, the parent having actual, uncontested custody of the child is to be regarded as having "legal custody." *Matter of M*, 3 I&N Dec. 850, 856 (BIA 1950).

In the present matter, the record contains a divorce decree reflecting that the applicant's parents divorced in the Dominican Republic on June 27, 1994. The divorce decree addresses the issue of custody over the applicant, and states that guardian and custody over the applicant is awarded to her mother. The record contains a subsequent April 10, 2007, agreement signed by the applicant's parents before an attorney-notary public, declaring that the applicant's mother transferred custody over the applicant to her father. The record additionally contains a July 12, 2007, court order from the Children and Adolescent Judicial Court in La Vega, Dominican

Republic, reflecting that the applicant's father was granted legal and physical custody over the applicant as of July 12, 2007.

The AAO finds that the applicant failed to establish, by a preponderance of the evidence, that her U.S. citizen father obtained legal custody prior to her eighteenth birthday. The applicant's parents' June 27, 1994, divorce decree awards guardian and custody over the applicant to her non-citizen mother. Moreover, the AAO notes that the April 10, 2007, agreement between the applicant's parents is a private document, and does not constitute a court order or legal amendment to the June 27, 1994 court order awarding custody over the applicant to her mother. Furthermore, although the record contains a July 12, 2007, court order awarding legal custody over the applicant to her father, the AAO notes that the Order occurred after the applicant turned eighteen on July 5, 2007. The applicant therefore failed to establish that her U.S. citizen father had legal custody prior to her eighteenth birthday.

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 failed to meet her burden of proof in the present matter. The appeal will therefore be dismissed and the Form N-600 will be denied.

**ORDER:** The appeal is dismissed. The application is denied.