

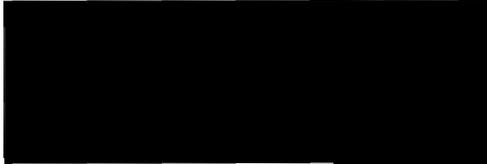
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U.S. Citizenship  
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Services

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FILE: [REDACTED] OFFICE: NEW YORK, NY Date: **MAR 07 2008**

IN RE: [REDACTED] APPLICANT: [REDACTED]

APPLICATION: Application for Certificate of Citizenship pursuant to 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 sustained and the application will be approved.

The record reflects that the applicant was born in Poland on January 18, 1984. The applicant's father was born in Poland, and he became a naturalized U.S. citizen on May 27, 1999, when the applicant was fifteen years old. The applicant's mother was born in Poland and she is not a U.S. citizen. The record reflects that the applicant's parents married in 1978. They divorced on November 13, 1998, when the applicant was thirteen years old. The applicant was admitted into the U.S. as a lawful permanent resident on June 15, 2000, when she was sixteen years old. She presently 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 derived citizenship through her father.

The district director concluded that the applicant had failed to submit documentation to establish her U.S. citizen father had been awarded custody over the applicant, as required by section 320 of the Act. The application was denied for lack of prosecution.

On appeal, the applicant submits a copy of her parents' November 13, 1998, Polish divorce decree.

Section 320 of the Act provides 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.

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).

The record contains a divorce decree reflecting that the applicant's parents divorced in Poland on November 13, 1998. The divorce decree grants legal custody over the applicant to both parents, and awards physical custody over the applicant to her mother. The applicant's father's legal custody over the applicant has therefore been established. Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33), states that, "[t]he term "residence" means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent." For section 320(a)(3) of the Act purposes, the physical custody requirement is thus a question of fact.

In the present matter, the applicant was admitted into the United States as a lawful permanent resident on June 15, 2000, prior to her eighteenth birthday. Identification and school evidence contained in the record indicate that the applicant subsequently resided in New York with her father. Based on the above factors, the AAO finds that the

applicant has thus also established that she resided in the United States in the physical custody of her U.S. citizen father subsequent to her admission into the United States as a lawful permanent resident, and prior to her eighteenth birthday.

The regulation provides at 8 C.F.R. § 341.2(c) that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. In the present matter, the applicant has established by a preponderance of the evidence that she met all of the requirements for automatic citizenship as set forth in section 320 of the Act. The appeal will therefore be sustained, and the application will be approved.

**ORDER:** The appeal is sustained. The application is approved.