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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

E2



FILE:

Office: NEW YORK, NY

Date: **MAY 06 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 that reads "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Form N-600, Application for Certificate of Citizenship (N-600 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 N-600 application will be approved.

The applicant was born in China on April 22, 1994. She will turn eighteen on April 22, 2012. The applicant's mother, [REDACTED], was born in China and she became a naturalized U.S. citizen on April 25, 2005, when the applicant was eleven years old. The applicant's father is not a U.S. citizen. The record reflects that the applicant's parents divorced on April 24, 1995, when the applicant was one year old. The applicant was admitted into the United States as a lawful permanent resident on December 4, 2000, when she was six 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 U.S. citizenship through her mother.

The district director found that the applicant had failed to provide evidence establishing she resided in the physical custody of her U.S. citizen mother, as required by section 320(a)(3) of the Act. The N-600 application was denied accordingly.

Through her mother, the applicant asserts on appeal that she has lived in the U.S. in her mother's physical custody since 2000. The applicant submits New York school and medical records, as well as a copy of a divorce decree reflecting that her mother was awarded physical custody over the applicant at the time of her parents' divorce.

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

- (a) (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.

Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33) provides 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."

The record contains the following evidence relating to the applicant's citizenship claim under section 320 of the Act:

A certification of birth reflecting that the applicant was born in China on April 22, 1994, to (mother) and [REDACTED] (father).

A divorce decree reflecting that the applicant's parents divorced on April 24, 1995, and that her mother was awarded joint legal custody and sole physical custody over the applicant.

A U.S. Permanent Resident Card reflecting that the applicant was admitted to the United States as a lawful permanent resident on December 4, 2000.

A Certificate of Naturalization reflecting that the applicant's mother became a naturalized U.S. citizen on April 25, 2005.

New York medical and school record documentation reflecting that the applicant received medical treatment and attended school in New York between 2000 and July, 2005.

The applicant's N-600 application reflecting that she and her mother reside at the same address in New York.

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. Under the preponderance of evidence standard, it is generally sufficient that the proof establish that something is probably true. *Matter of E-M*, 20 I&N Dec. 77 (Comm. 1989.)

The applicant's mother's certificate of naturalization establishes that she became a naturalized U.S. citizen prior to the applicant's eighteenth birthday. The U.S. lawful permanent resident documentation contained in the record establishes that the applicant also became a lawful permanent resident prior to her eighteenth birthday. In addition, the AAO finds that the school and medical documentation, and divorce decree evidence contained in the record establishes by a preponderance of the evidence that the applicant has resided in New York in the physical and legal custody of her mother since at least 2000. Accordingly, the applicant has established that she meets all of the requirements for automatic vesting of citizenship under section 320 of the Act. The applicant has thus met her burden of proof in the present matter, and the appeal will be sustained and the N-600 application approved.

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