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U.S. Citizenship
and Immigration
Services

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FILE:

OFFICE: NEW YORK, NY

DATE:

MAY 15 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 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 United Kingdom on April 3, 1989. He turned eighteen on April 3, 2007. The record reflects that the applicant's father and mother were born in the United Kingdom, and they became naturalized U.S. citizens on June 17, 2004, when the applicant was fifteen years old. The applicant's parents married on June 13, 1980, and they remain married. The applicant was admitted into the United States as a lawful permanent resident on December 2, 1998, when he was nine years old. He presently seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. §1431.

The district director determined that the applicant was ineligible for citizenship under section 320 of the Act because he failed to establish that he resided in the United States in the physical custody of a U.S. citizen parent prior to his eighteenth birthday. The Form N-600 was denied accordingly.

Through his father, the applicant indicates on appeal that his parents moved to Corpus Christi, Texas in 2001, for employment reasons. The applicant did not move to Texas, and he remained in New York and lived with his uncle. The applicant indicates that his father paid for his living expenses in New York, and that he visited his parents in Texas during school vacations, and that his parents visited him in New York. On this basis, the applicant asserts that he meets the physical custody requirements contained in section 320 of the Act.

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.

The record contains copies of the applicant's parents' naturalization certificates, reflecting that his mother and father became naturalized U.S. citizens on June 17, 2004, when the applicant was fifteen years old. The applicant therefore meets the requirement set forth in section 320(a)(1) of the Act. Because he was born in wedlock, and his parents remain married, the applicant also meets the legal custody requirement contained in section 320(a)(3) of the Act. The record additionally contains evidence that the applicant was admitted into the United States as a lawful permanent resident on December 2, 1998, prior to his eighteenth birthday, as set forth in section 320(a)(3) of the Act. The AAO finds, however, that the

evidence in the record fails to establish that the applicant resided in the U.S. in the physical custody of a U.S. citizen parent, prior to his eighteenth birthday.

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.” In *Matter of Jalil*, 19 I&N Dec. 679 (BIA 1988), the Board of Immigration Appeals clarified that the maintenance of financial interests, the retention of a house, or the intention to return does not establish a person’s “dwelling place in fact” for purposes of section 101(a)(33) of the Act.

The record contains the following evidence relating to the applicant’s residence subsequent to his parents’ naturalization as U.S. citizens on June 17, 2004, and prior to his eighteenth birthday on April 3, 2007:

The applicant’s father’s statement on appeal that he and the applicant’s mother moved to Corpus Christi, Texas for employment reasons in 2001, and that the applicant remained in New York with his uncle, and continued to attend school in New York. The applicant’s father asserts that he paid for the applicant’s living expenses in New York, and the applicant’s father indicates that the applicant visited his parents in Texas during school vacations, and that his parents visited the applicant in New York when they could.

A July 15, 2006, letter from the applicant’s father’s employer in Corpus Christi, Texas (Red Roof Inn) reflecting that the applicant’s father has been employed with them as a manager since 2001.

March and April, 2004, letters from the applicant’s uncle and mother stating that the applicant lives with his uncle in New York, and that his father pays for his living expenses in New York.

The AAO finds that the fact that the applicant and his parents often visited each other in New York and in Texas, and the fact that the applicant’s father paid for his living expenses in New York, fails to establish that the applicant resided in the physical custody of his parents between June 17, 2004, and April 3, 2007. The evidence in the record clearly demonstrates that for employment reasons, the applicant’s parents moved permanently to Texas in 2001. Their principal, actual dwelling place in fact, was therefore in Corpus Christi, Texas after 2001. The evidence in the record demonstrates equally clearly that the applicant did not move to Texas with his parents, and that he lived permanently in New York with his uncle after 2001. The applicant’s principal, actual dwelling place in fact after 2001, was therefore with his uncle 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.)

Accordingly, the applicant has failed to establish, by a preponderance of the evidence that he resided in the physical custody of his mother or father after their naturalization as U.S. citizens on June 17, 2004, and prior to his eighteenth birthday. Because the applicant failed to fully meet the requirements set forth in section 320(a)(3) of the Act, he is ineligible for automatic citizenship under section 320 of the Act. The appeal will therefore be dismissed, and the N-600 application will be denied.

ORDER: The appeal is dismissed and the application is denied.¹

¹ The present decision is without prejudice to the applicant's filing, if eligible, a Form N-400, Application for Naturalization under section 316 of the Act, 8 U.S.C. § 1427.