

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

E2

FILE:

Office: ORLANDO, FL

Date:

MAY 21 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:

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, Orlando, Florida. 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 June 20, 1985 in Ramallah, Jordan. The applicant's birth certificate reflects that her parents are _____ and _____. The applicant's parents were married in 1983 and divorced in 1992. The applicant's father became a U.S. citizen upon his naturalization on May 20, 2002, when the applicant was 16 years old. The applicant was admitted to the United States as a lawful permanent resident on January 1, 2003, when she was 17 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 the applicant was not residing in her father's physical custody. The director's finding was based on the applicant's parents' divorce decree which awarded shared legal custody, but primary residential custody to the applicant's mother. The application was denied accordingly.

On appeal, the applicant, through counsel, maintains that she was in her father's legal and physical custody. The appeal is accompanied by a brief and supported by exhibits, including an "Acknowledgment" executed by the applicant's mother purporting to establish that she "assigned and waived" her children's custody and guardianship to the applicant's father "since 1994."

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 finds that the applicant has not established, by a preponderance of the evidence, that she was residing in the United States in the physical custody of her father. The record indicates that the applicant was admitted as a lawful permanent resident in January 2003. Her 18th birthday was in June 2003. Tax records in the applicant's file indicate that she was residing in Florida in her father's custody in 2005. School records appear to indicate that she was enrolled at Broward Community College from 2005 to 2007, after graduating from a "Non-US High School" in August 2003. The applicant's mother's "Acknowledgment" is not dated and does not support the applicant's claim that she was in her father's physical custody. There are no

documents in the applicant's file establishing that she resided in the United States with her father between January and June 2003.

The AAO notes that the record contains a copy of the applicant's U.S. passport. In accordance with *Matter of Villanueva*, 19 I&N Dec. 101 (BIA 1984), a valid U.S. passport constitutes conclusive proof of a person's U.S. citizenship and may not be collaterally attacked. Nevertheless, a certificate of citizenship may not be issued in the absence of evidence of eligibility.

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.