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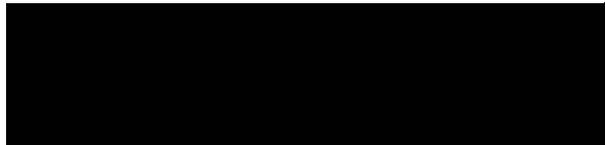
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: Office: NEW YORK, NY Date: MAY 23 2008

IN RE: Applicant: [Redacted]

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 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.

The record reflects that the applicant was born on July 20, 1989 in Ecuador. The applicant's birth certificate reflects that his parents are [REDACTED] and [REDACTED]. The applicant's parents have never been married to each other. The applicant's father became a U.S. citizen upon his naturalization on September 25, 2001, when the applicant was 12 years old. The applicant was admitted to the United States as a lawful permanent resident on August 18, 2005, when he was 16 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 he acquired U.S. citizenship from his father.

The district director denied the applicant's citizenship claim after finding that he was not residing in the United States in the physical custody of a U.S. citizen parent. The district director's finding was based on evidence in the record indicating that the applicant was attending school in Ecuador. The application was denied accordingly.

On appeal, the applicant's father submits documents dated January 2007 evidencing his registration in the local public school and a notarized statement dated January 2007 from the applicant's mother purporting to be a power of attorney in favor of the applicant's father. The appeal is also accompanied by documents relating to the applicant's half-sister.

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 had not yet reached their eighteenth birthday as of February 27, 2001. Because the applicant was under the age of 18 on February 27, 2001, he 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 notes at the outset that the applicant was born out of wedlock. Legal custody is presumed, in the case of a child born out of wedlock, only when the child has been legitimated and resides with the natural parent. See 8 C.F.R. § 320.1. In *Matter of Campuzano*, 18 I.&N. Dec. 390 (BIA 1983), the Board of Immigration Appeals noted that the Civil Code of Ecuador, which is based on the 1967 Constitution, makes no distinction between legitimate and illegitimate children and that a child is "legitimated" or "recognized" by the acknowledgment of either or both parents. As such, all children born in Ecuador after August 7, 1970 (the

effective date of the Civil Code amendment) . . . who were acknowledged by one parent should be considered legitimate children.

The question remains whether the applicant's father had legal custody of the applicant. The AAO notes that the record contains a notarized power of attorney executed by the applicant's mother in favor of his father, dated January 2007. The record also contains the applicant's immigrant visa application, and suggests that the applicant was admitted to the United States in August 2005 and resided in the legal and physical custody of his father until October 2005, and then again since January 2007. The applicant turned 18 years old on July 20, 2007. The AAO finds that the record sufficiently establishes that the applicant resided in the legal and physical custody of his U.S. citizen father and, as such, automatically acquired U.S. citizenship pursuant to section 320 of the Act, 8 U.S.C. § 1431.

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 met his burden and the appeal will be sustained.

ORDER: The appeal is sustained.