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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] 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 August 20, 1989 in Senegal. The record reflects that his parents are [REDACTED] and [REDACTED] e. The applicant's father became a U. S. citizen on June 7, 1996, when the applicant was 6 years old. The applicant's mother became a U. S. citizen on May 26, 2006, when the applicant was 16 years old. The applicant was admitted to the United States as a lawful permanent resident on June 18, 1997, when he was 7 years old. The applicant's 18th birthday was on August 20, 2007. 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 finding that he was not residing in the physical custody of a U. S. citizen parent. The district director based his finding on inconsistencies noted with respect to the applicant's school records and addresses. The application was denied accordingly.

On appeal, the applicant's father maintains that the applicant was residing with him and his wife during the period in question and that any discrepancy with respect to the applicant's address on school records is due to the father's desire to enroll the applicant in a better school.

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, 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.

- (b) Subsection (a) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

The AAO finds that the applicant has established, by a preponderance of the evidence, that he resided with his father upon his admission to the United States. The AAO notes that the applicant's father has provided an explanation for the different address listed in the school records. The AAO further notes the declaration of [REDACTED] n, corroborating the applicant's father's claim. The AAO concludes that the evidence in the record establishes that the applicant automatically acquired U. S. citizenship pursuant to section 320 of the Act.

8 C.F.R. § 341.2(c) provides that 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.