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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: NEW YORK, NY Date: APR 22 2004

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:

[redacted]

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record indicates that the applicant was born in Ibb, Yemen on September 6, 1986. The applicant's father, was born in Sana, Yemen on June 17, 1968, and he became a naturalized United States (U.S.) citizen on January 5, 1983. The applicant's mother was born in Yemen, and she continues to reside there. She is not a U.S. citizen. The record indicates that the applicant's parents were married in Yemen in December 1983. The applicant was lawfully admitted into the United States (U.S.) on April 28, 1998. He seeks a certificate of citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The district director concluded that the applicant was ineligible for automatic acquisition of U.S. citizenship pursuant to section 320 of the Act, because he did not reside in the United States in the legal and physical custody of his father.

On appeal, counsel asserts that the applicant resides in the U.S. in the legal and physical custody of his father, and that the applicant's departure from the U.S. was for the purpose of visiting his mother in Yemen.

Section 320(a) of the Act, effective on February 27, 2001, states 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 reflects that the applicant is under 18 years old and that his father has been a naturalized U.S. citizen since 1983. The record additionally reflects that the applicant was admitted into the U.S. as a lawful permanent resident on April 28, 1998. Nevertheless, the record contains no evidence, whatsoever, to establish that the applicant has, at any time, resided in the U.S. in the physical custody of his father. Moreover, the record reflects that the applicant's father stated during the applicant's naturalization interview that the applicant lives with his mother and attends school in Yemen. The AAO therefore finds that the applicant has failed to establish that he has resided in the physical custody of his father as required by section 320(a)(3) of the Act. Accordingly, the applicant has failed to establish that he acquired automatic U.S. citizenship pursuant to section 320 of the Act.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. *See also* § 341 of the Act, 8 U.S.C. § 1452. The applicant has not met his burden, and the appeal will be dismissed.

ORDER: The appeal is dismissed.