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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street N.W.
Washington, D.C. 20536

[redacted]

FILE [redacted] Office: Houston, Texas Date: JAN 07 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: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting District Director, Houston, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the application approved.

The applicant was born in Amealco, Queretaro, Mexico on August 25, 1985. The record indicates that the applicant's mother, [redacted] was born in San Luis Potosi, Mexico, on December 30, 1966, and that she became a naturalized United States (U.S.) citizen on April 6, 1999. The applicant's father is unknown. The record indicates that the applicant was lawfully admitted into the United States on February 26, 2002. The applicant 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 had failed to establish he was residing in the physical and legal custody of his U.S. citizen mother. The application was denied accordingly.

On appeal, the applicant, through his mother, indicates that, although the applicant failed to update his previous residential address on his naturalization application, he has continuously resided with his mother at, [redacted] The applicant's mother submits copies of her 2000, 2001, and 2002, federal tax returns, as well as high school report cards and envelopes and a Texas identity card as proof that the applicant lived at his mother's residence.

Section 320 of the Act 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 18th birthdays as of February 27, 2001. The applicant was 15 years old on February 27, 2001. He therefore meets the age requirement for benefits under the CCA.

Section 320(a) of the Act 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 AAO notes that the legal and physical custody requirements set forth in section 320 of the Act are assessed as of February 27, 2001, the date that the amendments made by the CCA legally came into effect. *See Matter of Jesus Enrique Rodriguez-Tejedor*, 23 I&N Dec. 153, 157 (BIA 2001).

The AAO notes further that on February 26, 2001, the Immigration and Naturalization Service (Service, now Citizenship and Immigration Services, CIS) issued a memorandum stating that:

> For children admitted as lawful permanent residents prior to February 27, 2001, the Service will presume that the U.S. citizen parent had legal custody, if the child is still living with and in the physical custody of the citizen parent on February 27, 2001.

See (HQISD 70/33), "Implementation Instructions for Title I of the Child Citizenship Act of 2000, Public Law 106-395 (CCA), by William R. Yates, Deputy Executive Associate Commissioner, Office of Field Operations at 7.

The AAO finds that the evidence submitted by the applicant on appeal establishes that the applicant was in the physical custody of his U.S. citizen mother on February 27, 2001, until he turned 18 on August 25, 2003. The applicant's mother's federal tax returns for the years 2000, 2001 and 2002, all list the applicant as a dependent residing with his mother at, [redacted] In addition, the high school report cards submitted by the applicant for the August to October 2002, and March to May 2003, school terms reflect that the applicant resided with his mother at the Falling Oaks Road address during that time. Moreover, the applicant's Texas identity card, issued on September 3, 2002, reflects that the applicant lived at [redacted] and copies of two envelopes sent to the applicant by his high school in April and June of 2003, indicate that the applicant lived with his mother at, [redacted]

The AAO finds that the applicant has established that his mother became a naturalized U.S. citizen in April of 1999, and that he resided in the U.S. in the legal and physical custody of his mother pursuant to a lawful admission for permanent residence on February 27, 2001, prior to his 18th birthday. The applicant is therefore entitled to automatic citizenship pursuant to section 320 of the Act.[1]

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[1] The AAO notes that the applicant meets the definition of child set forth in section 101(c) of the Act, pursuant to a September 26, 2003,

ORDER: The appeal is sustained and the application approved.

Memorandum by William R. Yates, CIS Acting Associate Director, entitled, "Eligibility of Children Born out of Wedlock for Derivative Citizenship" interprets Section 101(c)(1) of the Act, 8 U.S.C. §1431(c)(i), that states:

> Assuming an alien child meets all other requirements of Section 320 and 322, an alien child who was born out of wedlock and has not been legitimated is eligible for derivative citizenship when the mother of such a child becomes a naturalized citizen.