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U.S. Department of Homeland Security

Citizenship and Immigration Services

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

[redacted]

FILE [redacted] Office: PHILADELPHIA, PA 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: [redacted]

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 District Director, Philadelphia, Pennsylvania. The matter is now before the Administrative Appeals Office (AAO). The appeal will be sustained.

The applicant was born on October 19, 1990 in Medellin, Colombia. The applicant's mother [redacted] was born in Medellin, Colombia on November 16, 1970. She became a naturalized United States (U.S.) citizen on March 23, 2001. The applicant's father, [redacted] was born in Colombia on June 7, 1962. He is not a U.S. citizen. The record indicates that the applicant's natural parents were never married. The applicant was lawfully admitted to the United States for permanent residence on May 30, 1996. 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 did not meet the definition of "child" as defined in section 101(b)(1) of the Act, 8 U.S.C. § 1101(b)(1) because he failed to establish that he was in his father's legal custody at the time of his legitimation. The application was denied accordingly.

On appeal, counsel asserts that the applicant meets the definition of "child" as set forth in section 101(b)(1)(D), by virtue of his relationship to his U.S. citizen mother. Counsel asserts further that the applicant has established that he has been in the legal custody of his mother pursuant to the presumption of custody provisions set forth in the Code of Federal Regulations.

Section 320 of the Act states that a child born outside of the U.S. may automatically become a citizen of the United States upon fulfillment of the following conditions:

> (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 both the district director and counsel erred in applying the definition of child set forth in section 101(b)(1) of the Act to the present case. The definition of child contained in section 101(b)(1) of the Act, applies only in Title I and Title II, non-immigrant and immigrant cases. A review of the Act reflects that the definition of child contained in section 101(c) of the Act

applies in all Title III, naturalization and citizenship cases. The definition of child contained in section 101(c) of the Act should therefore have been applied in the applicant's case.

Section 101(c) of the Act states, in pertinent part, that:

> The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere, and except as otherwise provided in section 320, and 321 of title III, a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

Because the definitions of child contained in sections 101(b)(1)(c) and 101(c) of the Act both provide that an applicant must be in the legal custody of the legitimating parent at the time of legitimation, the district director's reliance on the definition contained in section 101(b)(1)(c) of the Act is found to be harmless.

The AAO finds that the district director erred in concluding that the applicant did not meet the legal custody requirements set forth in the Act's definition of child.

In *Matter of Rivers*, 17 I&N Dec. 419, 421 (BIA 1980), the Board of Immigration Appeals (Board) stated:

> [W]here a child born out of wedlock has been properly legitimated, neither parent will be presumed to have a greater right than the other to the legal custody of that child.

The Board additionally stated that:

> Unless there is evidence to show that the father of a legitimated child has been deprived of his natural right to custody, he will be presumed to share custody with the mother . . .

Id. at 423. Based on the reasoning set forth in *Matter of Rivers, supra,* the AAO therefore finds that both the applicant's mother and father shared equal legal custody over the applicant at the time that he was legitimated, and that the district director's conclusion that the applicant did not meet the definition of "child" because he was not in his father's legal custody at the time of legitimation was

erroneous.

In the present case, the record reflects that the applicant meets the definition of "child" as set forth in section 101(c) of the Act. Moreover, the evidence establishes that the applicant's mother became a naturalized U.S. citizen on March 23, 2001, that the applicant was lawfully admitted for permanent residence in the United States on May 30, 1996, that the applicant has permanently resided in the U.S. with his mother since 1996, and that the applicant is under the age of 18. The applicant is therefore entitled to automatic citizenship pursuant to section 320 of the Act.

ORDER: The appeal is sustained.