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U.S. Citizenship and Immigration Services

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JUN 01 2004

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

IN RE: Applicat[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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Interim District Director, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant was born on November 21, 1984, in Trinidad and Tobago. The record reflects that the applicant's parents never married. The applicant's father, was born in Trinidad and Tobago on March 26, 1957, and he became a naturalized United States (U.S.) citizen on December 23, 1998. The applicant's mother was born in Trinidad and Tobago and is not a United States citizen. The applicant was lawfully admitted for permanent residence in the United States on October 29, 1990. She seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The interim district director determined the applicant had failed to establish that her father legitimated her prior to her sixteenth birthday, as required by section 101 of the Immigration and Naturalization Act (the Act), 8 U.S.C. § 1101. The interim district director concluded that the applicant therefore did not qualify as a "child" for immigration purposes and that she additionally failed to meet legal custody requirements set forth in section 320 of the Act. The application was denied accordingly.

On appeal, the applicant asserts that she was legitimated by her father and that she meets the requirements for automatic citizenship under section 320 of the Act.

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 sixteen years old on February 27, 2001. She therefore meets the age requirement for benefits under the CCA.

Section 320 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 interim district director states in his decision that the applicant does not meet the definition of "child" as set forth in section 101(b)(1)(C) of the Act; 8 U.S.C. § 1101(b)(1)(C), because she failed to establish that she was legitimated by her father prior to her sixteenth birthday.[1]

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

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[1] The AAO notes that the definition of "child" contained in section 101(b)(1)(C) of the Act pertains to immigrant and non-immigrant cases arising under Title I and II of the Act. The proper definition of "child" for most certificate of citizenship cases arising under Title III of the Act, is contained in section 101(c) of the Act, rather than in section 101(b)(1)(C) of the Act. Nevertheless, because the age requirements for legitimation of a child are identical in section 101(b) and 101(c) of the Act, the AAO finds the interim district director's error to be harmless.

> 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 . . . if such legitimation . . . 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.

The AAO notes that under the Trinidad and Tobago Status of Children Act of 1981 (Status of Children Act), effective March 1, 1983, once paternity is established, there is no distinction between legitimate and illegitimate children, and all children have equal rights under the law. *See Matter of Patrick,* 19 I&N Dec. 726 (BIA 1988). The applicant in this case was born in 1984, after the passage of the Status of Children Act.

In *Matter of Patrick, supra* at 729, the Board of Immigration Appeals (Board) stated, "[t]he beneficiary [qualified] as the "child" of his natural father within the meaning of section 101(b)(1) of the Act . . . inasmuch as the Service [was] satisfied that the petitioner [had] adequately proven his paternity of the beneficiary . . . ."

The interim district director's decision indicates that although the applicant's original birth certificate, submitted to obtain her immigrant visa, did not contain her father's name, "[a] signed testimony presented in connection with the immigration [petition] gives the information that Mr[redacted]is your father, and that he acknowledged this fact. A baptismal certificate further confirms the claimed paternity." *See* Interim District Director Decision, dated May 19, 2003, at 2. A review of the record reflects that the applicant's immigrant visa petition, listing [redacted]as her father, was approved on October 29, 1990, when the applicant was five years old. Mr[redacted]related written acknowledgement of paternity was prepared on April 12, 1989, when the applicant was 3 years old, and the record reflects that the applicant's baptismal certificate was issued on September 7, 1990, when the applicant was 4 years old.

Based on the totality of evidence in the record, it appears that the Service (now Citizenship and Immigration Services, CIS) was satisfied in October 1990, that Mr[redacted]had adequately proven his paternity over the applicant. The AAO therefore finds that the applicant's father acknowledged paternity over the applicant prior to her sixteenth birthday and that she was therefore legitimated under the Status of Children Act in Trinidad and Tobago, prior to her sixteenth.

The AAO additionally notes the Board's finding in *Matter of Rivers,* 17 I&N Dec. 419, 422-23 (BIA 1980), that a natural father is presumed to have legal custody of his child at the time of legitimation in the absence of affirmative evidence indicating otherwise, and 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, and to satisfy the legal custody requirement of section 101(b)(1)(C).

Id. at 423. Furthermore, on February 26, 2001, the Immigration and Naturalization Service (Service, now Citizenship and Immigration Services, CIS) issued a Service-wide memorandum with instructions for the adjudication of certificate of citizenship applications under amendments made by the CCA. The memo stated 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 (Service Memo) at 7. Based on the legal custody presumptions set forth in *Matter of Rivers, supra,* and in the February 26, 2001, Service memo, the applicant's father has met the legal custody requirements set forth in section 101(c) and in section 320 of the Act.

The AAO therefore finds that the applicant has established, 1) that her father became a naturalized U.S. citizen prior to her eighteenth birthday, 2) that on February 27, 2001, she was under the age of eighteen, 3) that she met the definition of "child" as set forth in section 101(c) of the Act, and 4) that on February 27, 2001, she resided in the U.S. in the legal and physical custody of her father pursuant to a lawful admission for permanent residence. The applicant is thus entitled to automatic citizenship pursuant to section 320 of the Act, and the appeal will be sustained.

ORDER: The appeal is sustained.