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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: DALLAS, TEXAS Date: MAR 01 2004

IN RE: Applicant: [redacted]

PETITION: Application for Certificate of Citizenship under section 320 of the Immigration and Nationality Act, 8 U.S.C. § 1431.

ON BEHALF OF APPLICANT:

[redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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 Director, Dallas, Texas. The matter is now before the Administrative Appeals Office (AAO). The appeal will be sustained.

The applicant was born on January 4, 1994, in Moscow, Russia. The applicant's mother, was born in Kazakhstan on October 26, 1962. She became a naturalized United States (U.S.) citizen on January 30, 2003. The applicant's natural parents were never married and the record contains no evidence that the applicant was legitimated by his natural father. The applicant was lawfully admitted to the United States for permanent residence on November 21, 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 center director concluded that the applicant had failed to meet the definition of "child" as defined in section 101(c) of the Act, 8 U.S.C. § 1101(c)(1). The application was denied accordingly.

On appeal, counsel asserts that the applicant qualifies for U.S. citizenship under section 320 of the Act.

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.

Section 101(c) of the Act states, in pertinent part, that for Title III naturalization and citizenship purposes:

> 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.

A September 26, 2003, Memorandum, by Citizenship and Immigration Services (CIS), Acting Associate Director, entitled, "Eligibility of Children Born out of Wedlock for Derivative Citizenship" interprets Section 101(c)(1) of the Act, and 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.

In the present case, the record contains a birth certificate establishing the applicant's out of wedlock birth to his mother on January 4, 1994. The record additionally reflects that the applicant's mother became a naturalized U.S. citizen on January 30, 2003, that the applicant was lawfully admitted for permanent residence in the United States on November 21, 1996, and that the applicant has permanently resided in the U.S. since 1996. In addition, it has been established that the applicant is under the age of 18 and he resides in the legal

and physical custody of his mother. The applicant therefore meets the definition of "child" as set forth in section 101(c) of the Act, and he is entitled to automatic citizenship pursuant to section 320 of the Act.

ORDER: The appeal is sustained.