U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: MIAMI, FLORIDA Date: MAR 03 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 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 Acting District Director, Miami, Florida, 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 Kingston, Jamaica on June 2, 1987. The applicant's father, [redacted] was born in Kingston, Jamaica on April 23, 1962, and he became a naturalized United States (U.S.) citizen on July 6, 1999. The applicant's mother was born in Jamaica and she continues to reside there. She is not a U.S. citizen. The record indicates that the applicant's parents were married in Jamaica on May 12, 1984, and that they divorced in Jamaica on November 13, 1992. At the time of their divorce, the Jamaican Family Court granted custody of the applicant to her mother. The record indicates that the applicant was lawfully admitted into the United States (U.S.) on August 30, 2001. The applicant seeks a certificate of citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

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

On appeal, the applicant, through her father, asserts that she qualifies for U.S. citizenship under section 320 of the Act. In support of this assertion, the applicant submits an August 21, 2002, Jamaican Family Court order granting custody of the applicant to her father.

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 her father has been a naturalized U.S. citizen since 1999. The record additionally reflects that the applicant entered the U.S. as a lawful permanent resident on August 30, 2001, and that her U.S. citizen father was granted custody of the applicant in August 2002. The AAO notes, however, that despite a Citizenship and Immigration Services (CIS) request for evidence establishing that the applicant is in her father's physical custody in the U.S., the record contains no evidence, whatsoever, to establish that the applicant has resided in the physical custody of her U.S. citizen father. [1]

The applicant has therefore failed to establish that she has resided in the physical custody of her father at any point subsequent to her arrival in the United States. Accordingly, the applicant has failed to establish that she acquired automatic U.S. citizenship pursuant to section 320 of the Act and the appeal will be dismissed.

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[1] The AAO notes that on April 23, 2002 and July 3, 2002, the Miami District Office requested evidence that the applicant was in the physical custody of her U.S. citizen father. The requests indicated that acceptable evidence should be as extensive as possible, and that it could include school records showing the applicant's father as the primary parent, medical records, and income taxes showing that the applicant's father claimed her as a dependant.

ORDER: The appeal is dismissed.