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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: PROVIDENCE, RI Date: MAR 15 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 Officer in Charge, Providence, Rhode Island, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born on June 29, 1985, in Portugal. The record reflects that the applicant's parents never married. The record reflects further that the applicant's birth certificate did not state who her father was at the time of her birth. The birth certificate was subsequently amended on May 6, 1988, to include the applicant's father's name. The applicant's father, was born in Guinea-Bissau on April 16, 1965, and he became a naturalized United States (U.S.) citizen on April 2, 1998. The applicant's mother was born in Guinea-Bissau and she is not a United States citizen. The applicant was lawfully admitted for permanent residence in the United States on April 1, 1999. She seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The officer in charge concluded that the applicant's father had legitimated her on May 6, 1988, by adding his name as the father on the applicant's birth certificate. The officer in charge determined, however, that the applicant had failed to establish that she was in her father's legal custody at the time of her legitimation. The application was denied accordingly.

On appeal, the applicant asserts that she meets the requirements for a certificate of citizenship pursuant to 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 15 years old on February 27, 2001. She therefore meets the age requirement for benefits under the CCA.

Section 320 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 officer in charge decision states that the applicant does not meet the definition of "child" as set forth in section 101(c) of the Act; 8 U.S.C. § 1101(c), because she failed to establish that she was in the legal custody of her father at the time that she was legitimated.

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 . . . 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.

Under Portuguese law, a child born out of wedlock is legitimated only upon the marriage of the natural parents, provided there has also been recognition of the child. *See Matter of F--,* 7 I&N Dec. 448 (BIA 1957).

The 1954, Board of Immigration Appeals case, *Matter of P--,* 5 I&N Dec. 689 (BIA 1954), held that pursuant to Rhode Island statute 1993 (R.S. 1993), legitimation of a natural child could be accomplished only if the child's natural parents married each other. The term "legitimation" was replaced by the term "paternity" in amended Rhode Island legislation. Presently, Title 15, Section 15-8-3 of the Rhode Island, Uniform Law on Paternity, states in pertinent part:

> § 15-8-3 Presumption of paternity, - (a) A man is presumed to be the natural father of a child if:
>
> (1) He and the child's natural mother are or have been married to each other . . .
>
> (2) Before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law . . .
>
> (3) After the child's birth, he and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage could be declared invalid, and:
>
> (i) He has acknowledged his paternity of the child in writing filed with the clerk of the family court;
> (ii) With his consent, he is named as the child's father on the child's birth certificate; or
> (iii) He is obligated to support the child under a written voluntary promise or by court order;
>
> (4) He acknowledges his paternity of the child in a writing filed with the clerk of the family court, who shall promptly inform the mother of the filing of the acknowledgement, and she does not dispute the acknowledgement . . . .
>
> (5) He has submitted to blood testing and the results establish a conclusive presumption in accordance with § 15-8-11(e); or
>
> (6) A sworn acknowledgment of paternity of a child born out of wedlock is signed by both parents on forms prescribed in accordance with § 23-3-9, either at the department of human services or division of taxation within the department of administration, and is forwarded to the state registrar of vital records for the purpose of amending the birth certificate . . . .

The AAO finds that there is no evidence in the present record to indicate that the applicant's father and mother ever married or attempted to marry, or that prior to the applicant's sixteenth birthday, the applicant was legitimated by her father in accordance with the provisions set forth in sections 15-8-3(a)(4) through (a)(6) of the Rhode Island, Uniform Law on Paternity. The applicant has therefore failed to establish that she has been legitimated by her natural father, or that she meets the definition of "child" as set forth in section 101(c) of the Act. Accordingly, she also fails to meet the requirements set forth in section 320 of the Act, and the appeal will be dismissed.[1]

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[1] Although no longer pertinent to the present case, the AAO notes the Board of Immigration Appeals

ORDER: The appeal is dismissed.

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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).

Based on the evidence in the record, and on the above legal guidance, it appears that if the applicant had been properly legitimated by her father prior to her sixteenth birthday, she would have met the legal custody requirements set forth in both section 101(c) of the Act.