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

PUBLIC COPY
Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

E2

U.S. Citizenship
and Immigration
Services

[redacted]

FILE: [redacted] Office: NEW YORK, NEW YORK 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 District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed

The applicant was born on September 27, 1989, in the Dominican Republic. The applicant's father, Juan Echavarria, was born in the Dominican Republic on July 17, 1963, and he became a naturalized United States (U.S.) citizen on February 9, 2001. The applicant's mother, [redacted] born in the Dominican Republic and does not have a claim to United States citizenship. The applicant's parents were never married. The record indicates that the applicant was lawfully admitted into the United States for permanent residence on January 13, 1995. The applicant obtained a Permit to Reenter the United States in April 2000, so that she could return to the Dominican Republic to reside with her mother and to study. The applicant seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

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

On appeal, the applicant, through her father, states that she should be exempted from the physical custody requirements set forth in section 320 of the Act, because the Immigration and Naturalization Service (Service, now Citizenship and Immigration Services, CIS) granted her permission to reside outside of the U.S. in order to continue her studies in the Dominican Republic.

Section 320 of the Act was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA allows a child born outside of the United States, who has not yet reached his or her eighteenth birthday as of February 27, 2001, to automatically become a U.S. citizen upon the 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, 8 U.S.C. § 1101(c) states in pertinent part:

> 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 . . . parent or parents at the time of such legitimation.

In *Matter of Cabrera,* 21 I&N Dec. 589, 592 (BIA 1996), the Board of Immigration Appeals (Board) held that, "A child residing or domiciled in the Dominican Republic may qualify as a legitimated child . . . as soon as his father acknowledges paternity in accordance with Dominican law." Moreover, the Board held in *Matter of Rivers,* 17 I&N Dec. 419 (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. The record in

the present case contains evidence that the applicant's father legally recognized the applicant in the Dominican Republic, on September 29, 1994.

The applicant has thus established that she was under the age of 18 on February 27, 2001, that her father became a U.S. citizen prior to her 18th birthday, and that she meets the definition of "child" and legal custody requirements set forth in section 320 of the Act.[1] Nevertheless, the AAO finds that the applicant has failed to establish that she meets the physical custody requirements necessary to derive automatic citizenship pursuant to section 320 of the Act.

The record reflects that the applicant's father stated under oath that the applicant has not lived with him and that she has instead resided with her mother and gone to school in the Dominican Republic. The record contains no evidence to indicate that the applicant resided in the physical custody of her father on February 27, 2001, or at any other time subsequent to that date. Moreover, the applicant's assertion that she should be exempted from the physical custody requirements set forth in section 320 of the Act, because in April 2000, the Service granted her Permission to leave the U.S., is unconvincing.

The Form I-131, referred to by the applicant, relates to a Service Application for a Travel Document application, and is the form used for obtaining a reentry permit into the United States. The information contained on the I-131 application clearly states that:

> A reentry permit allows a permanent resident or conditional resident to apply for admission to the United States during the permit's validity without having to obtain a returning resident visa from an American embassy or consulate. A reentry permit is not required for a return from a trip of less than one year's duration.
>
> **Possession of a reentry permit does not relieve [the applicant] of any requirements of the immigration laws**, except the necessity to obtain a visa from an American embassy or Consulate . . . . (Emphasis added).

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. *See also* § 341 of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1452. The applicant has not met this burden. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.

---

[1] The AAO notes that the legal and physical custody requirements in the present case are assessed as of February 27, 2001. *See Matter of Jesus Enrique Rodriguez-Tejedor*, 23 I&N Dec. 153, 157 (BIA 2001).