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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW YORK, NEW YORK Date: 2 1 2005

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

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 record reflects that the applicant was born in Yemen on November 13, 1991. The applicant's father became a naturalized U.S. citizen on June 15, 1996. The applicant's mother is not a U.S. citizen. The record reflects that the applicant's parents were married in Yemen in November 1, 1990, and that the applicant's father lives in the United States, while his mother continues to live in Yemen. The applicant was admitted into the United States as a lawful permanent resident on April 15, 1999. At the time of his citizenship interview, the applicant's father testified that the applicant lived in Yemen with his mother. He presently seeks a certificate of citizenship under § 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The district director concluded that the applicant had failed to establish he resided in the U.S. in the legal and physical custody of his U.S. citizen parent, as required by § 320 of the Act. The application was denied accordingly. On appeal, counsel asserts, without providing any evidence thereof, that the applicant resides with his father in the United States and only returned twice to Yemen to "finish some school and visit with his mother..." Counsel states on the Form I-290B that documentation in support of this contention will be submitted at the time of the appeal interview. As of this date, the AAO has received no further documentation regarding the applicant's place of residence.

Regarding counsel's reference to an appeal interview, the regulations provide that the requesting party must explain in writing why oral argument is necessary. Citizenship and Immigration Services (CIS) has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, counsel identified no unique factors or issues of law to be resolved. In fact, counsel set forth no specific reasons why oral argument should be held. Moreover, the written record of proceedings fully represents the facts and issues in this case. Consequently, the request for oral argument is denied.

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 eighteenth birthdays as of February 27, 2001. The applicant is not yet eighteen years old; hence, he meets the age requirement for benefits under the CCA.

Section 320 of the Act states in pertinent part 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.

Based on the evidence on the record, the district director found that the applicant does not meet the requirements set forth in subsection (a)(3) of § 320 of the Act. Counsel fails to submit any evidence to

overcome the director's basis for determining that the applicant is ineligible for a certificate of citizenship; therefore, the appeal is dismissed.

The burden of proof in this proceeding rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not sustained that burden.

**ORDER:** The appeal is dismissed.