U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FILE: [redacted] Office: SEATTLE, WA Date: FEB 23 2005

IN RE: Applicant: [redacted]

APPLICATION: Application 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, Seattle, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born in Russia on March 11, 1989. The applicant's father, [redacted] was born in Uzbekistan, and he became a naturalized U.S. citizen on August 19, 1999. The applicant's mother, [redacted] was born in Uzbekistan, and she is not a U.S. citizen. The applicant's parents married on October 18, 1975. They divorced in Russia on May 30, 1985. 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 determined the applicant had failed to establish that he meets the definition of "child" as set forth in section 101(c) of the Act; 8 U.S.C. § 1101(c). The district director concluded that the applicant therefore did not qualify for citizenship under section 320 of the Act, and the application was denied accordingly.

On appeal, the applicant, through his father, asserts that he is a legitimated child under Russian and the former Soviet Union law, and that he therefore qualifies for U.S. citizenship under 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 eighteenth birthday as of February 27, 2001. The applicant was twelve years old on February 27, 2001. He therefore 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.

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.

The AAO notes that although the applicant asserts on appeal that he has been legitimated under Russian and former Soviet Union law, the applicant submits no information regarding the Russian or former Soviet Union legitimation laws, and the record is devoid of evidence on legitimation laws in Russia or the former Soviet

Union. Accordingly, the AAO finds that the applicant has failed to establish he was legitimated by his father under Russian or former Soviet Union law.

Pursuant to pre-April 2002, Washington Revised Code (RCW) 26.26.040, legitimation of a natural child could be accomplished while the child was under the age of majority, if the father received the child into his home and openly held out the child as his child. *See Burgess v. Meese,* 802 F.2d 338 (9th Cir. 1986). The Washington State Supreme Court decision, *State on Behalf of McMichael v. Fox,* 937 P.2d 1075, 1078 (Wash., 1997), stated that, "RCW 26.26.040 provides for a presumption of paternity in certain instances such as birth of the child during marriage, taking the child into the home and openly holding the child out as his, or acknowledging paternity."

The AAO notes that RCW 26.26.040 legitimation provisions were repealed on April 2, 2002 by laws 2002, chapter 302, section 711, and replaced with RCW 26.26.116. Pursuant to RCW 26.26.116, a man is presumed to be the father of a child if, essentially, he marries or attempts to marry the mother of the child within a year prior to or after the child's birth, he records his name on the child's birth certificate, and he promises, on record, to support the child as his own.

The AAO finds that there is no evidence in the present record to indicate that the applicant's father and mother re-married or attempted to marry within a year prior or subsequent to the applicant's birth. The applicant therefore failed to establish that his father legitimated him under RCW 26.26.040. Nevertheless, the AAO notes that section 320 of the Act specifically states that citizenship is "automatic" upon fulfillment of the conditions set forth in subsection (a) of the provision. Because the applicant was admitted into the U.S. and resided with his father in Washington prior to April 2, 2002, the applicant's citizenship claim will also be analyzed pursuant to pre-April 2002, Washington state, legitimation law (RCW 26.26.040).

The record reflects that the applicant's father's name is recorded on the applicant's birth certificate and that the applicant's father has acknowledged his paternity on the applicant's school registration documents and in immigrant visa petition documents. In addition, the record reflects that the applicant was admitted into the U.S. on May 15, 2001, pursuant to the immigrant visa petition filed by his father, and the applicant has resided with his father in Washington since May 2001. The applicant has therefore established that his father has openly held the applicant out as his son since May 2001. Accordingly, the applicant meets the requirements for legitimation as set forth in RCW 26.26.040.

The AAO finds that the applicant has also established that he has resided in the legal custody of his father since May 2001. The present record contains a copy of the applicant's parents' divorce decree reflecting that on May 30, 1985, the applicant's parents obtained a divorce in Moscow, Russia. The AAO notes that the divorce decree contains no information relating to custody over the applicant. However, legal custody vests "by virtue of either a natural right or a court decree". *See Matter of Harris,* 15 I&N Dec. 39 (BIA 1970). Moreover, in the absence of a judicial determination or grant of custody in a case of a legal separation of the naturalized parent, the parent having actual, uncontested custody of the child is to be regarded as having legal custody. *See Matter of M,* 3 I&N Dec. 850, 856 (BIA 1950).

Accordingly, the AAO finds that the applicant has established that he resided in his father's legal custody prior to his sixteenth birthday, and prior to the enactment of amended Washington state legitimation requirements. The applicant therefore established that he met the definition of "child" between May 2001 and April 2002. The applicant additionally established that his father became a naturalized U.S. citizen in 1999,

prior to the applicant's eighteenth birthday, and that between May 2001 and April 2002, the applicant resided in the legal and physical custody of his father, pursuant to a lawful admission for permanent residence. Accordingly, the applicant has established that he meets the automatic citizenship requirements set forth for citizenship under section 320 of the Act, and the appeal will be sustained.

ORDER: The appeal is sustained.