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**U.S. Citizenship
and Immigration
Services**

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FILE:

OFFICE: ATLANTA, GA

DATE: JUL 26 2006

IN RE:

APPLICANT:

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Atlanta, Georgia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born in Togo on August 24, 1986. The applicant's father [REDACTED] was born in Togo on November 21, 1959, and he became a naturalized U.S. citizen on July 12, 1999, when the applicant was seventeen years old. The applicant's mother [REDACTED] was born in Togo. The record contains no information regarding her citizenship status. The record reflects that the applicant's parents were married, and that they obtained a divorce in Togo on October 11, 1994, when the applicant was eight years old. The applicant was admitted into the U.S. as a lawful permanent resident on December 28, 1995, when he was nine years old. He presently 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 that the applicant's parents' divorce decree awarded legal custody over the applicant to his mother. The application was subsequently denied because the applicant had failed to establish that his U.S. citizen father had legal custody over him prior to his eighteenth birthday.

On appeal, the applicant asserts that he did not live with his natural mother after his parents' divorce, and that his natural mother did not provide for, or care for him. The applicant asserts that he has lived with, and been cared for by his natural father and stepmother, and he indicates that he is therefore entitled to U.S. citizenship.

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 fourteen years old on February 27, 2001. He therefore meets the age requirement for benefits under the CCA.

Section 320(a) of the Act states in pertinent part that:

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.

Legal custody vests "[b]y virtue of either a natural right or a court decree." *Matter of Harris*, 15 I&N Dec. 39 (BIA 1970). The AAO notes that section 320 of the Act does not require that the applicant establish his U.S. citizen father had *sole* legal custody over the applicant. Indeed, in *Matter of Rivers*, 17 I&N Dec. 419, 422-23 (BIA 1980), the Board of Immigration Appeals stated that "[u]nless 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." "[W]e will presume that the father has not been divested of his natural right to equal custody in the absence of affirmative evidence indicating otherwise." *Matter of Rivers*, *supra*.

The record contains an October 11, 1994 divorce decree for the applicant's parents, from the Tribunal of the First District Magistrates' Court in Lome, Togo. The divorce decree orders the divorce of the applicant's parents, and

“commits the children to the care of Ms. [REDACTED] the applicant’s mother. The divorce decree provides further that visitation rights are to be arranged by mutual consent between the parties. The decree makes no other order regarding the parents’ custody rights over the applicant.

The AAO finds that although the divorce decree between the applicant’s parents appears to award physical custody over the applicant to his mother, the divorce decree did not award sole legal custody over the applicant to his mother, and it did not divest the applicant’s father of his natural right to joint legal custody over the applicant. The AAO notes further that the record contains no other evidence to indicate that the applicant’s father was in any way, divested of his joint legal custody rights over the applicant. Accordingly, the AAO finds that the applicant’s father had legal custody over the applicant subsequent to his October 11, 1994 divorce, and prior to the applicant’s eighteenth birthday.

The record contains U.S. Immigration and Naturalization Service (Service, now U.S. Citizenship and Immigration Service, CIS) correspondence, and immigrant visa and adjustment of status documentation reflecting that the applicant has resided in the U.S. with his father since his admission into the United States as a lawful permanent resident in December 1995. The applicant therefore established that he has resided in the physical custody of his father since he was eight years old. The record additionally contains U.S. Certificate of Naturalization information reflecting that the applicant’s father became a naturalized U.S. citizen on July 12, 1999, prior to the applicant’s eighteenth birthday.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. The AAO finds the applicant has established that he meets the requirements for citizenship as set forth in section 320 of the Act. The appeal will therefore be sustained.

ORDER: The appeal is sustained.