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

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW YORK, NY Date: MAY 13 2008

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on November 11, 1988 in the Dominican Republic. The applicant's birth certificate reflects that her parents are [redacted] and [redacted] The applicant's father became a U.S. citizen upon his naturalization on May 18, 1996, when the applicant was 7 years old. The applicant was admitted to the United States as a lawful permanent resident on July 2, 2006, when she was 17 years old. The applicant seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, claiming that she acquired U.S. citizenship from her father.

The district director denied the applicant's citizenship claim after finding that she was not residing in the United States in the physical custody of a U.S. citizen parent. The district director's finding was based on evidence in the record indicating that the applicant was residing in the Dominican Republic. The application was denied accordingly.

On appeal, the applicant's father maintains that he accompanied his daughter on her trips abroad and that she has been in his physical custody. The applicant does not submit any additional evidence in support of her claim.

Section 320 of the Act, 8 U.S.C. § 1431, 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. Because the applicant was under the age of 18 on February 27, 2001, she meets the age requirement for benefits under the CCA.

Section 320 of the Act, 8 U.S.C. § 1431, 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.

The AAO finds that the applicant has not established, by a preponderance of the evidence, that she was residing in the United States in the physical custody of her father. The record indicates that the applicant was admitted as a lawful permanent resident in July 2006, but travelled to the Dominican Republic in August 2006. The record further indicates that the applicant finished high school in the Dominican Republic and competed in the National Academic Tests there in November 2006. The applicant's passport records indicate that she returned to the United States for a few days in February 2007. The record suggests that the applicant's father travelled with her in February 2007.

The record is, at best, unclear with respect to the applicant's residence between the time she was admitted as a lawful permanent resident and her 18th birthday. The applicant has not provided any evidence or argument on

appeal that would establish that she was "residing in the United States" in her father's physical custody as required by section 320 of the Act, 8 U.S.C. § 1431. The AAO notes "[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." *Fedorenko v United States*, 449 U.S. 490, 506 (1981). The U.S. Supreme Court has further stated "it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect. This Court has often stated that doubts 'should be resolved in favor of the United States and against the claimant." *Berenyi v. District Director*, 385 U.S. 630, 671 (1967).

Pursuant to 8 C.F.R. § 341.2(c), the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. In order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is "probably true" or "more likely than not." *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). The applicant has not met her burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.