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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: NEW YORK, NY Date: **MAY 14 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 sustained.

The record reflects that the applicant was born on November 29, 1985 in Morocco. The applicant's birth certificate reflects that her parents are _____ and _____. The applicant's father became a U.S. citizen upon his naturalization on September 20, 1996, when the applicant was 10 years old. The applicant was admitted to the United States as a lawful permanent resident on October 30, 2001, when she was 15 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 testimony by the applicant indicating that she had been residing with her sisters, and her father had been residing outside the United States. The application was denied accordingly.

On appeal, the applicant maintains that the district director erred in finding that she was not living with her father. In support of her appeal, the applicant submits tax, employment and financial documentation evidencing her father's residence in the United States.

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 applicant has established that her father naturalized and that she was admitted to the United States as a lawful permanent resident before her 18th birthday. The AAO finds that the applicant has also established, by a preponderance of the evidence, that she was residing in the United States in the legal and physical custody of her father prior to her 18th birthday. The AAO notes that the record on appeal contains copies of income tax returns, employment letters, a copy of a rental agreement, copies of canceled checks, and other documents evidencing that the applicant's father was residing in the United States. The AAO recognizes that the applicant's school records list her sister as guardian. There is no other evidence suggesting that the applicant was not residing in her father's custody. Indeed, there is significant evidence in the record indicating that the applicant resided in her father's custody upon admission to the United States and before her 18th birthday.

The AAO therefore concludes that the applicant automatically acquired U.S. citizenship upon fulfillment of the conditions stated in section 320 of the Act, 8 U.S.C. § 1431.

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 met her burden and the appeal will be sustained.

ORDER: The appeal is sustained.