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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529



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

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FILE: [REDACTED] Office: NEW YORK, NY Date: JUN 01 2009

IN RE: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401

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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, New York, New York. The matter came before the Administrative Appeals Office (AAO) on appeal. The appeal was dismissed. Upon *sua sponte* reopening, the appeal will be sustained and the application approved.

The record reflects that the applicant was born on October 9, 2001 in Lebanon. The applicant's parents are [REDACTED] and [REDACTED]. The applicant's parents were married in Lebanon in 1984. The applicant's father became a U.S. citizen upon his naturalization on April 17, 2007, when the applicant was five years old. The applicant was admitted to the United States as a lawful permanent resident on August 7, 2007, when she was five years old. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship from her father pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The district director denied the citizenship claim upon finding that the applicant was not in her father's physical custody. The application was denied accordingly. On appeal, the applicant, through counsel, claimed that she acquired U.S. citizenship upon her admission to the United States as a lawful permanent resident. The AAO dismissed the applicant's appeal, finding that she had failed to establish that she was in her father's legal custody. On April 15, 2009, the AAO reopened the matter *sua sponte* and allowed the applicant an opportunity to submit additional evidence. The AAO received the applicant's response to the request on May 13, 2009.

The AAO notes that the applicant has obtained a U.S. passport. It is well-established that a valid U.S. passport constitutes conclusive proof of a person's U.S. citizenship and may not be collaterally attacked. *Matter of Villanueva*, 19 I&N Dec. 101 (BIA 1984). The applicant's file now contains a copy of her U.S. passport. Moreover, the regulations require an applicant for a certificate of citizenship to submit "documentary and other evidence essential to establish the claimed citizenship." 8 C.F.R. § 341.1. Such evidence is required because, among other things, it is necessary for USCIS to determine the date when citizenship was acquired.

Section 320 of the Act, 8 U.S.C. § 1431, was amended by the Child Citizenship Act of 2000 (the CCA). The amendments took effect on February 27, 2001 and apply only to persons who were not yet 18 years old as of February 27, 2001. Because the applicant was under the age of 18 on February 27, 2001, she is eligible for the benefits of section 320 of the amended Act. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

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.

(b) Subsection (a) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

The applicant in this case has established that she was admitted as a lawful permanent resident of the United States and that her father naturalized prior to her 18<sup>th</sup> birthday. The AAO has previously determined that the applicant is in her father's legal custody. The question remained whether the applicant is in her father's physical custody.

The AAO notes that the applicant is seven years old. The record suggests that she was admitted to the United States as a lawful permanent resident, but that she departed shortly thereafter with her mother back to Lebanon. She has since returned to the United States, is enrolled in school in New York, and has been claimed as a dependent in her parents' federal income tax returns. The evidence submitted by the applicant in response to the AAO's reopening establishes that the applicant "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 therefore automatically acquired U.S. citizenship pursuant to section 320 of the Act, 8 U.S.C. § 1431.

8 C.F.R. § 341.2(c) provides that 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. The appeal will therefore be sustained.

**ORDER:** The appeal is sustained and the application approved.