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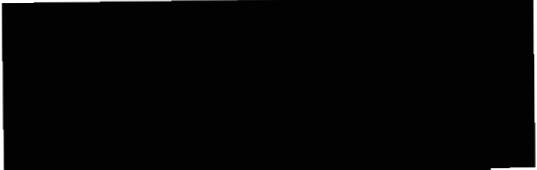
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:

Office: NEW YORK, NY

Date:

MAY 04 2010

IN RE:



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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the director for action consistent with this decision.

The record reflects that the applicant was born on November 15, 1990 in the Dominican Republic. The applicant's parents, as indicated on her birth certificate, are [REDACTED] and [REDACTED]. The applicant's parents were divorced in 1991. The applicant's father became a U.S. citizen upon his naturalization on October 12, 2007. The applicant adjusted her status to that of lawful permanent resident of the United States on November 4, 2008. The applicant seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, based on the claim that she acquired U.S. citizenship through her father.

The district director concluded that the applicant did not acquire U.S. citizenship upon finding that she was not in her father's legal custody following the applicant's parents' divorce. The application was accordingly denied.

On appeal, the applicant maintains that her mother transferred her guardianship to her father prior to her immigrant visa processing in June 2008. *See* Applicant's Statement on Form I-290B, Notice of Appeal to the AAO and Appeal Brief. The applicant submits a notarized statement executed by her mother in support of her claim.

Section 320 of the Act was amended by the Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), and took effect on February 27, 2001. CCA § 104. The CCA benefits all persons who had not yet reached their 18th birthdays as of February 27, 2001. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Because the applicant was under 18 years old 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 record indicates that the applicant was admitted to the United States as a lawful permanent resident and that her father naturalized prior to her 18th birthday. In order to automatically acquire

U.S. citizenship under section 320 of the Act, *supra*, the applicant must also establish that she was residing in the United States “in the legal and physical custody” of her U.S. citizen father.

The record suggests that the applicant was in her father’s physical custody since her admission as a lawful permanent resident. Nevertheless, the applicant’s parents’ divorce decree awards legal custody of the applicant to her mother. Legal custody vests by virtue of “either a natural right or a court decree”. See *Matter of Harris*, 15 I&N Dec. 39, 41 (BIA 1970). The regulations provide that legal custody will be presumed “[i]n the case of a child of divorced or legally separated parents . . . where there has been an award of primary care, control and maintenance of a minor child to a parent by a court of law or other appropriate government entity pursuant to the laws of the state or country of residence.” 8 C.F.R. § 320.1 (defining “legal custody”).

The record does not contain any evidence that the custody award was officially amended by the court. The AAO notes that the applicant’s mother’s “Power of Guardianship and Tutor of Minor” executed in 2008 is no more than a voluntary transfer of guardianship, and does not appear to be an official court amendment of the original custody award.

The AAO notes further that the record contains a copy of the applicant’s U.S. passport. In *Matter of Villanueva*, 19 I&N Dec. 101 (BIA 1984), the Board of Immigration Appeals (Board) held that a valid U.S. passport is conclusive proof of U.S. citizenship. Specifically, the Board held in *Matter of Villanueva* that:

unless void on its face, a valid United States passport issued to an individual as a citizen of the United States is not subject to collateral attack in administrative immigration proceedings but constitutes conclusive proof of such person’s United States citizenship.

A certificate of citizenship cannot be issued to the applicant where, as here, there are serious discrepancies between U.S. Citizenship and Immigration Services (USCIS) information and passport records. The USCIS Adjudicator’s Field Manual at § 71.1(e) instructs that

An unexpired United States passport issued for 5 or 10 years is now considered prima facie evidence of U.S. citizenship. Because it does not provide the actual basis upon which citizenship was acquired or derived, the submission of additional documentation may be required or the passport file may be requested. If after review there are differences or discrepancies between the USCIS information and the Passport Office records which would indicate that the application should not be approved, no action should be taken until the Passport Office has an opportunity to review and decide whether to revoke the passport.

The matter must therefore be remanded to the director to request that the Passport Office review and decide whether to revoke the applicant’s passport. The director shall issue a new decision once the

Passport Office's review is completed and, if adverse to the applicant, certify the decision to the AAO for review.

ORDER: The matter is remanded to the director for action consistent with this decision and issuance of a new decision, which, if adverse to the applicant, shall be certified to the Administrative Appeals Office for review.