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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

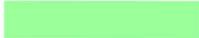


U.S. Citizenship
and Immigration
Services

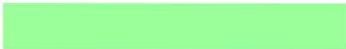


Date: JUL 02 2013

Office: OMAHA, NE

FILE: 

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Ron R. Ambers

Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Omaha, Nebraska, and 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 January 1, 1999 in Somalia. The applicant's father, [REDACTED] became a U.S. citizen upon his naturalization on June 1, 2011. The applicant was admitted to the United States as a refugee and adjusted her status to that of a lawful permanent resident as of July 28, 2005. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, as amended by the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000).

The director denied the application finding that the applicant had failed to submit evidence that she was in her father's legal and physical custody. On appeal, the applicant, through her father, states that she would like to become a U.S. citizen. See Statement of the Applicant on Form I-290B, Notice of Appeal or Motion.

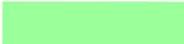
The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The applicable law for derivative citizenship purposes is “the law in effect at the time the critical events giving rise to eligibility occurred.” See *Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005). Thus, section 320 of the Act, as amended by the CCA, is applicable to her case.

Section 320 of the Act provides, 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's father became a U.S. citizen upon his naturalization in 2011, and the applicant was admitted to the United States as a lawful permanent resident as of 2005. The applicant is under the age of 18. Nevertheless, the record indicates that the applicant is not residing with her father. The applicant's father is not currently married to her mother. The record, however, does not contain any evidence relating to the applicant's parents' legal separation or custodial agreement. The applicant therefore cannot establish that she is in her father's legal and physical custody.

“There 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 applicant



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must meet her burden of proof by establishing the claimed citizenship by a preponderance of the evidence. 8 C.F.R. § 320.3. Here, the applicant has failed to meet this burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.