



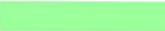
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **MAR 07 2013**

Office: HELENA, MT

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:



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.

Thank you,

Ron Rosenberg

Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Helena, Montana, and 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 [REDACTED] in Pakistan. The applicant was adopted by [REDACTED] and [REDACTED] on March 21, 2011. The applicant's adoptive parents had been granted guardianship of her as of May 15, 2009. The applicant was admitted to the United States as lawful permanent resident on November 1, 2011, when she was 16 years old. The applicant's adopted father became a U.S. citizen upon his naturalization on December 16, 1999. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship upon her admission to the United States as a lawful permanent resident 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 field office director denied the application finding that the applicant had not been in her adoptive parents' legal custody for the required two year period such that she could acquire U.S. citizenship. *See Decision of the Field Office Director*, dated May 17, 2012. Citing to the regulation at 8 C.F.R. § 320.1, the director concludes that legal custody of the applicant began on her adoption date.

On appeal, the applicant, through counsel, maintains that she was in her adoptive parents' legal custody as of the date they were granted guardianship. *See Counsel's Letter in Support of Appeal*. Counsel claims, citing to 8 C.F.R. § 320.1, that the applicant's adoptive parents' guardianship award amounts to "other factual circumstances" warranting a finding that the applicant was in her adoptive parents' legal custody as of May 15, 2009.

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). The applicant was under 18 years of age on the effective date of the CCA, February 27, 2001. 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 adopted father has been a U.S. citizen since his naturalization in 1999. The applicant was adopted on March 21, 2011 and admitted to the United States as a lawful permanent resident on November 1, 2011. The applicant's adopted parents were granted guardianship of the applicant on July 7, 2010, retroactive to May 15, 2009. *See Order Appointing Guardians of Minor Child nunc pro tunc.* The guardianship order states that the applicant's adopted parents were "entrusted with all the rights, privileges, obligations, and responsibilities" over the applicant, including her "care and custody." *Id.*

The regulations provide that legal custody "refers to the responsibility for and authority over a child." *See* 8 C.F.R. § 320.1 (defining "legal custody"). Under the regulation, legal custody is presumed "[i]n the case of a child of an adopted child . . . based on the existence of a final adoption decree." The regulation at 8 C.F.R. § 320.1 further provides that "[t]here may be other factual circumstances under which [USCIS] will find the U.S. citizen parent to have legal custody for purposes of the CCA."

The AAO concludes that there are "other factual circumstances" in this case which warrant a finding that the applicant was in her adoptive parents' legal custody beginning on May 15, 2009, namely the order appointing them her guardians and entrusting them "with all the rights, privileges, obligations, and responsibilities," including the applicant's "care and custody." The applicant therefore was in her adoptive parents' legal custody for the required two year period, and acquired U.S. citizenship automatically pursuant to section 320 of the Act upon her admission to the United States as lawful permanent resident.

"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 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 met this burden. Accordingly, the appeal will be sustained. The matter will be returned to the Helena Field Office for issuance of a certificate of citizenship.

ORDER: The appeal is sustained. The matter is returned to the Helena Field Office for issuance of a certificate of citizenship.