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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**

E2



Date: **APR 03 2012**

Office: NEW YORK, NY

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:

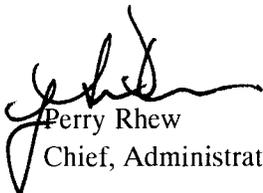
SELF-REPRESENTED

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, New York, New York, and came before the Administrative Appeals Office (AAO) on appeal. The matter was remanded to the director. The director issued a new decision and certified the matter to the AAO. The director's decision will be affirmed and the application will remain denied.

The record reflects that the applicant was born on [REDACTED] 1987 in the Dominican Republic. The applicant's parents, as indicated on his birth certificate, are [REDACTED]. The applicant's father became a U.S. citizen upon his naturalization on [REDACTED] 1974. The applicant's parents were married in New York in 1996. The applicant was admitted to the United States as a lawful permanent resident on [REDACTED] 1999, when the applicant was 11 years old. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship through his father.

The district director initially found that the applicant had not established that he acquired U.S. citizenship at birth under section 309 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1409. On appeal, the AAO agreed with the director's decision in this regard but remanded the matter for consideration of the applicant's eligibility for U.S. citizenship under section 320 of the Act, 8 U.S.C. § 1431, as amended by the Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000). The director was instructed to enter a new decision which, if adverse to the applicant, should be certified to the AAO.

The CCA, which amended sections 320 and 322 of the Act, took effect on February 27, 2001. The CCA benefits all persons who had not yet reached their eighteenth birthdays as of February 27, 2001. Because the applicant was under 18 years old on [REDACTED] 2001, he 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 evidence in the record establishes that the applicant was admitted to the United States as a lawful permanent resident prior to his eighteenth birthday. The record further establishes that his father has been a U.S. citizen since 1992, and that his parents have been married since 1996.

The question remained whether the applicant could establish that he was residing in the United States in the legal and physical custody of his U.S. citizen father prior to his eighteenth birthday.

Upon remand, the director requested that the applicant submit additional evidence of relating to his residence and custody prior to his eighteenth birthday. In response to the director's request, the applicant submitted a copy of a school record indicating that he was residing with his mother. There is no evidence in the record that the applicant was in his father's legal and physical custody prior to his eighteenth birthday.

“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 his burden of proof by establishing the claimed citizenship by a preponderance of the evidence. 8 C.F.R. § 320.3. Here, the applicant has not met this burden. Accordingly, the applicant is not eligible for a certificate of citizenship and his application will remain denied.

**ORDER:** The director's decision is affirmed, the application remains denied.