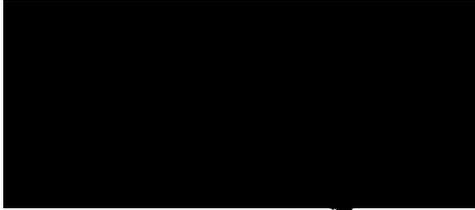


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**U.S. Citizenship
and Immigration
Services**

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AUG 16 2005

FILE:

Office: PHILADELPHIA, PA

Date:

IN RE: Applicant:

APPLICATION: Application for Certificate of Citizenship under § 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Cambodia on July 8, 1991. The applicant's mother was born in Cambodia, and she became a naturalized U.S. citizen on April 28, 2004, when the applicant was twelve years old. The applicant's father is not a U.S. citizen. The record reflects that the applicant's parents were married on an unknown date and were divorced on November 4, 1996 in Cambodia. The applicant was admitted into the United States as a lawful permanent resident on November 26, 2001, when she was ten years old. She seeks a certificate of citizenship under § 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The district director concluded that the applicant had failed to establish that she resided in the U.S. in the legal custody of her U.S. citizen parent, as required by § 320 of the Act. The application was denied accordingly. On appeal, the applicant, through her mother, asserts that although the divorce decree between her parents awards legal custody to the applicant's father, the applicant's mother assumed legal custody prior to the applicant's eighteenth birthday, because the applicant's father surrendered custody to her mother.

Section 320 of the Act was amended by the Child Citizenship Act of 2000 (CCA), and 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 nine years old on February 27, 2001, she meets the age requirement for benefits under the CCA.

Section 320 of the Act 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 reflects that the applicant was admitted into the United States in 2001, and that the applicant's mother became a naturalized U.S. citizen in 2004. Both events occurred prior to the applicant's eighteenth birthday. The applicant therefore meets the requirements set forth in subsections (a)(1) and (a)(2) of § 320 of the Act.

Legal and physical custody requirements set forth in § 320 of the Act are assessed as of February 27, 2001, the date that the amendments made by the CCA legally came into effect. *See Matter of Jesus Enrique Rodriguez-Tejedor*, 23 I&N Dec. 153, 157 (BIA 2001). The applicant indicated on the Form N-600 that as of the date of her April 28, 2004 application, she was residing with her mother. Nevertheless, the AAO finds that the evidence on the record fails to establish that the applicant resided in the legal custody of her mother on February 27, 2001, or thereafter, and prior to her eighteenth birthday, as required by § 320 of the Act.

Legal custody vests "by virtue of either a natural right or a court decree". *See Matter of Harris*, 15 I&N Dec. 39 (BIA 1970). In the absence of a judicial determination or grant of custody in a case of a legal separation of

the naturalized parent, the parent having actual, uncontested custody of the child is to be regarded as having "legal custody". See *Matter of M*, 3 I&N Dec. 850, 856 (BIA 1950).

The divorce decree obtained by the applicant's father on November 4, 1996 reflects that the applicant's father was awarded custody over the applicant by judicial decree. On appeal, the applicant submits a statement made by her father on January 24, 1998 at the district police station in Phnom Penh, Cambodia. The applicant's father stated that he gave custody rights over the applicant and two of her siblings to the applicant's mother, on account of his poverty. The AAO notes, however, that the applicant did not enter the United States until November 26, 2001. In addition, the declaration at the police station does not constitute an amended court order awarding the applicant's mother legal custody over the applicant. The AAO therefore finds that the applicant has failed to establish that she resided in the legal custody of her U.S. citizen mother, as set forth in § 322(a)(4) of the Act.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant has not met her burden. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.