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U.S. Citizenship
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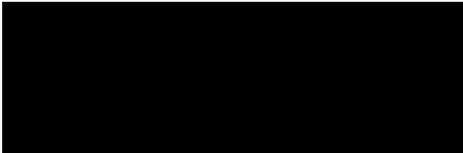
Applicant:



APPLICATION:

Application Certificate of Citizenship under § 320 of the Immigration and Nationality Act, 8 U.S.C. § 1431.

ON BEHALF OF APPLICANT:



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 Interim District Director, New York, New York. 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 in Ivory Coast on November 7, 1988. The applicant's father became a naturalized U.S. citizen on August 1, 2002. The applicant's mother is not a U.S. citizen, and the applicant's parents never married each other. The applicant seeks a certificate of citizenship pursuant to § 320 of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1431.

The interim district director determined the applicant had failed to establish that she meets the definition of "child" as set forth in § 101(c) of the Act; 8 U.S.C. § 1101(c). The interim district director concluded that the applicant therefore did not qualify for citizenship under § 320 of the Act, and the application was denied. On appeal, the applicant's father asserts that he legitimated the applicant pursuant to the laws of New York and the Ivory Coast. The record contains no evidence, however, regarding the legitimation laws of the Ivory Coast. The applicant has established on the other hand, that she was legitimated pursuant to New York law. She therefore meets the definition of child described in § 101(c) of the Act. The totality of the evidence shows that the applicant qualifies for U.S. citizenship under § 320 of the Act.

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 birthday as of February 27, 2001. The applicant was twelve years old on February 27, 2001; thus, 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 applicant established that her father became a naturalized U.S. citizen in 2002, prior to the applicant's eighteenth birthday. The Applicant resides in the legal and physical custody of her father, and she is a lawful permanent resident.

Section 101(c) of the Act states, in pertinent part that:

The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere . . . if such legitimation . . . takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

Although the applicant's father asserts on appeal that he legitimated the applicant under the laws of the Ivory Coast, he fails to include any evidence in support of this claim. Accordingly, the AAO finds that the applicant has failed to establish that she was legitimated by her father under the laws of the Ivory Coast.

Nevertheless, according to § 4-1.2(a)(2)(C) of the New York Estates, Powers and Trusts Law (1992), in the absence of the intermarriage of the applicant's parents, the applicant may be legitimated if paternity has been established by clear and convincing evidence, and the father of the child has openly and notoriously acknowledged the child as his own. The record reflects that the applicant's father's name is recorded on the applicant's birth certificate, and the applicant's father acknowledged his paternity in an Ivorian confirmation of paternity document. Paternity has thus been established by clear and convincing evidence.

The record also contains several documents that demonstrate the applicant's father's relationship with the applicant. For example, the applicant's step-mother filed a petition for alien relative on behalf of the applicant as her step-daughter, the applicant's high school records reflect her residence with her father, the applicant appears as a beneficiary on her father's life insurance and is listed under his health and dental insurance, and her name is on her father's tax return. The record establishes that the applicant's father has openly held her out as his daughter since her birth. Accordingly, the applicant meets the requirements for legitimation as set forth in New York state law. The legitimation took place prior to the applicant's sixteenth birthday, and the applicant, who is currently sixteen years old, is unmarried.

The applicant has established that she has resided in the physical and legal custody of her father since her arrival in the United States as a lawful permanent resident in November 4, 2002. The AAO notes that 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). Moreover, unless local law specifically divests the father of custody, children are presumed to be in the legal custody of both natural parents. *Matter of Rivers*, 17 I&N Dec. 419, 421 (BIA 1980). Accordingly, the applicant has established that she meets the definition of "child" for the purposes of citizenship and naturalization.

The applicant has established that she meets all of the requirements set forth for under § 320 of the Act: therefore, she qualifies for a certificate of citizenship. The appeal will be sustained.

ORDER: The appeal is sustained.