

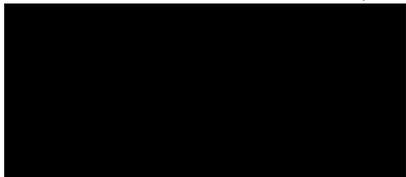
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U.S. Citizenship
and Immigration
Services



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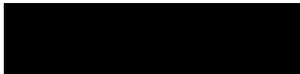


Office: NEW YORK, NEW YORK

Date: JAN 24 2005

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:

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, New York, New York, 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 Poland on March 9, 1987. The applicant's father [REDACTED] was born in Poland on March 25, 1951, and he became a naturalized United States (U.S.) citizen on October 1, 1998, when the applicant was eleven years old. The applicant's mother [REDACTED] was born in Poland on February 9, 1961, and she is not a U.S. citizen. The record reflects that the applicant's parents married on March 27, 1982. The applicant was admitted into the United States as a lawful permanent resident on July 7, 1992, when he was five years old. He presently seeks a certificate of citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The district director concluded the applicant had failed to establish that he resided in the U.S. in the physical custody of his U.S. citizen parent, as required by section 320 of the Act. The application was denied accordingly.

On appeal, the applicant, through his father, asserts that he resides in Poland during the school year and returns to the U.S. during summer vacations, and that he believes he is entitled to acquire citizenship through his U.S. citizen father.

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 have not yet reached their eighteenth birthdays as of February 27, 2001. Because the applicant was thirteen years old on February 27, 2001, he 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 1992, and that the applicant's father became a naturalized U.S. citizen in 1998. 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 section 320 of the Act.

Legal and physical custody requirements set forth in section 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 record reflects that the applicant's parents married prior to the applicant's birth, and that both parents share legal custody over the applicant. *See generally, Matter of Rivers*, 17 I&N Dec. 419 (BIA 1980). Nevertheless, the AAO finds that the evidence in the record fails to establish that the applicant resided in the United States in the physical custody of his father on February 27, 2001, or thereafter, as required by section 320 of the Act.

The record contains copies of the applicant's 1999 through 2001, Polish school records. The record reflects further that, although the applicant returns temporarily to the United States during school vacations, the applicant attends school and resides in Poland. The applicant thus failed to establish that he meets the requirements for citizenship as set forth in section 320(a)(3) of the Act.

The AAO notes that the applicant has also failed to establish that he qualifies for citizenship under section 322 of the Act. Section 322 of the Act applies to children born and residing outside of the United States and states, in pertinent part, that:

(a) A parent who is a citizen of the United States . . . may apply for naturalization on behalf of a child born outside of the United States who has not acquired citizenship automatically under section 320. The Attorney General [now Secretary, Homeland Security "Secretary"] shall issue a certificate of citizenship to such applicant upon proof, to the satisfaction of the Attorney General [Secretary], that the following conditions have been fulfilled:

(1) At least one parent . . . is a citizen of the United States, whether by birth or naturalization.

(2) The United States citizen parent--

(A) has . . . been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years; or

(B) has . . . a citizen parent who has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years.

(3) The child is under the age of eighteen years.

(4) The child is residing outside of the United States in the legal and physical custody of the applicant

(5) The child is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.

The record contains no evidence to establish that the applicant resides outside of the United States in the physical custody of his U.S. citizen father. Moreover, the applicant has failed to establish that he was temporarily admitted into the United States or that his father was physically present in the U.S. or its outlying possessions for at least five years since becoming a U.S. citizen.

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. *See also* § 341 of the Act, 8 U.S.C. § 1452. The applicant has not met his burden, and the appeal will be dismissed.

ORDER: The appeal is dismissed.