

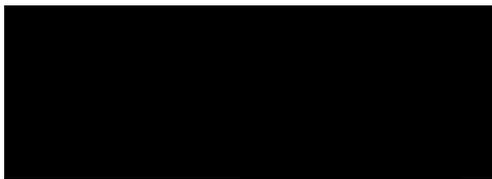


U.S. Citizenship
and Immigration
Services

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FILE:

Office: NEW YORK, NY

Date:

NOV 29 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 remanded for further action consistent with this decision.

The Form N-600, Application for Certificate of Citizenship (N-600 Application) contained in the record reflects that the applicant was born in India on January 5, 1987. The N-600 application reflects that the applicant's father is [REDACTED] and that he was born in India and became a naturalized U.S. citizen on August 26, 1996, when the applicant was nine years old. The N-600 application reflects that the applicant's mother is [REDACTED] and that she was born in India and is not a U.S. citizen. The N-600 application indicates that the applicant did not submit a marriage certificate for his parents. The N-600 application contains no information relating to the applicant's parents' marriage. The record reflects that the applicant was admitted into the United States pursuant to a lawful admission for permanent residence on June 9, 2000, when he was thirteen years old. The applicant 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 that the applicant had failed to establish he resides in the physical custody of his U.S. citizen father. The application was denied accordingly.

On appeal, the applicant, through his father, asserts that he resides in the United States and that he is a full-time student at the [REDACTED] Junior High School in Jamaica, New York.

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 18th birthdays as of February 27, 2001. The applicant was fourteen years old on February 27, 2001. He therefore 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.

Section 101(c) of the Act, 8 U.S.C. § 1101(c) provides that:

- (1) 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, and, except as otherwise provided in sections 320 and 321 of title III, a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of 16 years (except to the extent that the child is described in subparagraph (E)(ii) or

(F)(ii) of subsection (b)(1)), and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

The AAO notes that the record of proceedings, as presently constituted, contains no marriage information for the applicant's parents. The record additionally lacks a copy of the applicant's parents' marriage certificate or a copy of the applicant's birth certificate. The AAO is therefore unable to properly assess the applicant's parentage and whether he meets the definition of "child" set forth in section 101(c) of the Act.

Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33), states that, "[t]he term "residence" means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent." The Board of Immigration Appeals clarified in *Matter of Jalil*, 19 I&N Dec. 679 (BIA 1988), that the maintenance of financial interests, the retention of a house, or the intention to return does not establish a person's "dwelling place in fact" for purposes of section 101(a)(33) of the Act.

In denying the applicant's citizenship claim, the district director stated that the applicant's father had testified under oath that his son did not live in the United States and that he lived with his mother in India and attended the Punjab Public High School in India. On this basis the district director found that the applicant had failed to establish that he resided in the United States in the physical custody of his U.S. citizen father.

The record of proceedings, as presently constituted lacks the interview notes or any other evidence of the applicant's father's statements regarding his son's place of residence. Moreover, the AAO notes that the present record contains a copy of a June 19, 2001 letter signed by the Pupil Accounting Secretary of the Robert A. Van Wyck Junior High School in Jamaica, New York, stating that the applicant was admitted as a student on March 23, 2001, and that his dates of attendance were 3/23/01 to present (6/19/01). The existence, and evidentiary value of the Junior High School letter was not discussed in the district director's decision.

The AAO notes that the 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. *Matter of Jesus Enrique Rodriguez-Tejedor*, 23 I&N Dec. 153, 157 (BIA 2001). Thus, if the applicant establishes that he meets the definition of "child", that he resided in physical custody of his U.S. citizen father and that he otherwise met section 320 of the Act requirements on February 27, 2001 or thereafter, and prior to his eighteenth birthday, he will have established that he automatically became a U.S. citizen

After thoroughly reviewing the evidence contained in the present record of proceedings, the AAO finds that the record is incomplete and that it contains insufficient information for an AAO determination on whether the applicant meets the definition of a "child" under section 101(c) of the Act, and on whether the applicant resided in the legal and physical custody of a U.S. citizen parent on February 27, 2001 or thereafter, and prior to his eighteenth birthday, for section 320 of the Act, automatic citizenship purposes. Accordingly, the AAO finds it necessary to remand the present application to the district director for consideration of the issues stated, and entry of a new decision which, if adverse to the applicant, shall be certified to the AAO for review, accompanied by a properly prepared record of proceedings.

ORDER: The matter is remanded to the district director for further action consistent with this decision.