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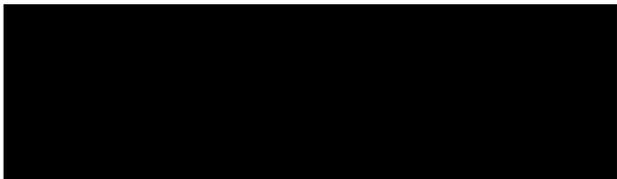
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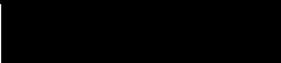
U.S. Citizenship
and Immigration
Services

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FILE:



Office: PHILADELPHIA

Date: DEC 01 2006

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Philadelphia, 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 Russia on May 24, 1990. The applicant's father, [REDACTED] was born in Russia on December 7, 1957, and he became a naturalized U.S. citizen on May 16, 2003, when the applicant was twelve years old. The applicant's mother, [REDACTED] was born in Russia, and she is not a U.S. citizen. The applicant was admitted into the United States as a lawful permanent resident on December 22, 1996, when she was six years old. She 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 that the applicant failed to establish she resided in the United States in the legal and physical custody of her U.S. citizen parent, as required by section 320 of the Act. The application was denied accordingly.

On appeal, the applicant, through her mother and father, asserts that her father has legal and physical custody of her. *Statements from Applicant's Parents*, dated November 14, 2005 and October 8, 2005. Specifically, the applicant's parents provide that the applicant resides with her mother during the week, yet she resides with her father on weekends and during the evenings. *Id.*

The record contains statements from the applicant's parents; a copy of the applicant's birth certificate; a copy of the applicant's father's U.S. passport; a copy of the applicant's permanent resident card; a copy of a phone bill for the applicant's father; a copy of the applicant's father's lease; a letter from the applicant's school confirming her address, and; a letter from Camden County College as evidence of the applicant's mother's address. The entire record was reviewed and considered in rendering this decision.

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 seventeen 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.

At issue in the present proceeding is whether the applicant is residing in the United States in the legal and physical custody of her U.S. citizen father, as required by section 320(a)(3) of the Act. As noted by the district director, the divorce decree for the applicant's parents does not provide a custody agreement, thus the applicant has not submitted an official document that assigns custody of her to one of her parents.

The applicant's parents state that the applicant resides with her mother during the week, yet she resides with her father on the weekends. They indicated that the applicant visits with her father after school during the week. The applicant's parents state that the applicant resides with her mother due to the fact that the residence is in the district of a school which the applicant attends.

The record contains evidence that supports that the applicant resides with her mother and claims her mother's address as her own. For example, the applicant provided a letter from her school that states that her address is [REDACTED] Marlton, New Jersey, the same as her mother's address. The applicant has not submitted any independent evidence that she has resided with her father.

Based on the foregoing, the AAO is unable to conclude that the applicant resides in the physical custody of her father. As observed by the district director, the applicant resides with her mother for the majority of her time. The preponderance of the evidence supports that the applicant is in fact in the physical custody of her mother.

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). As the record supports that the applicant's mother has physical custody of the applicant, the evidence further supports that the applicant's mother has legal custody of her.

Accordingly, the applicant has not established that she meets the custody requirements of section 320(a)(3) of the Act. For this reason, the application may not be approved.

The regulation at 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.