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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

Ez

PUBLIC COPY

FILE:

Office: ANCHORAGE

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Anchorage, 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 the Philippines on February 19, 1990. The applicant's father, [REDACTED] was born in the Philippines on July 7, 1962, and he became a naturalized U.S. citizen on August 23, 2001, when the applicant was eleven years old. The applicant's mother, [REDACTED] was born in the Philippines and she is not a U.S. citizen. The record reflects that the applicant's parents were never married. The applicant was admitted into the United States as a lawful permanent resident on April 20, 2004, when he was 14 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 that the applicant failed to establish he resided in the United States in the legal custody of his U.S. citizen father, as required by section 320 of the Act. The application was denied accordingly.

On appeal, the applicant's father asserts that the applicant has resided with him in his legal custody since 2004. *Statement from Applicant's Father on Form I-290B*, dated May 3, 2006. The applicant submits a statement from his mother in which his mother confirms that he has been residing with his father in the United States since 2004, and she attests that the applicant is in the legal custody of his father. *Statement from Applicant's Mother*, dated March 22, 2006. The applicant's mother provides that she gives her consent for the applicant to stay with his father in the United States and acquire U.S. citizenship. *Id.*

The record contains statements from the applicant's mother and father; a letter from the applicant's father's landlord confirming that the applicant and his father have resided in Hawaii since April 20, 2004; documentation of the applicant's school attendance in Hawaii; a copy of the applicant's birth certificate; government records from the Philippines confirming that there are no records that the applicant's parents were married, and; a copy of the naturalization certificate of the applicant's father. The entire record was 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 under eighteen years of age 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.

At issue in the present matter is whether the applicant is residing in the United States in the legal custody of his U.S. citizen father. The AAO finds that the applicant has not submitted sufficient evidence to show that he is in fact in the legal custody of his father.

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 noted above, the applicant’s parents were never married. The applicant’s mother states that the applicant came to the United States to reside with his father “sometime in the year 2004,” thus the record suggests that the applicant resided with his mother in the Philippines prior to that time. As the applicant was an illegitimate son residing with his mother, it is presumed that his mother had physical and legal custody of him “by a natural right.” *See Matter of Harris*, 15 I&N Dec. at 39. The applicant has provided no evidence to show otherwise.

As observed by the district director, the record reflects that the applicant began to reside in the physical custody of his father when he came to the United States in 2004. The applicant’s mother confirms that she consented to the applicant relocating to the United States. However, the applicant has not provided evidence that his father obtained legal custody of him. The applicant’s mother’s statement serves as evidence that she retains legal custody, as she reports that she gives consent for the applicant to reside in the United States. If the applicant’s father held sole legal custody, such consent would not be necessary.

The record contains no official document or court order to support that the applicant’s father obtained legal custody of him. As the applicant’s parents were not married, there exists no divorce decree that addresses child custody. The applicant’s mother states that the applicant “is in the legal custody of his father in the United States,” yet her affidavit is not sufficient to grant legal custody to the applicant’s father, as contemplated by section 320(a)(3) of the Act.

Based on the foregoing, the applicant has failed to establish that he resides in the legal custody of his U.S. citizen father, as required by section 320(a)(3) of the Act.

The regulations 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 his burden. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.