



U.S. Citizenship  
and Immigration  
Services

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invasion of personal privacy.



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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: DEC 21

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 Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born in the Dominican Republic on October 8, 1987. The applicant's mother, \_\_\_\_\_ was born in the Dominican Republic on December 9, 1968, and she became a naturalized U.S. citizen on April 14, 2005, when the applicant was 17 years old. The applicant has not asserted, and the record does not support, that the applicant's father, \_\_\_\_\_ was a U.S. citizen. The applicant was admitted into the United States as a lawful permanent resident on August 15, 1997, when she was nine 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 custody of her U.S. citizen parent, as required by section 320 of the Act. *Decision of the District Director*, dated May 16, 2006. Specifically, the director observed that the applicant's mother served as the translator for a child custody paragraph that the applicant claimed was an addition to her parents' divorce decree. *Id.* The director was not persuaded that the additional paragraph was an addendum to the divorce decree, and he implied that the fact that the applicant's mother served as the translator weakened its evidentiary value. *Id.* The application was denied accordingly.

On appeal, the applicant asserts that she has been residing in the legal and physical custody of her U.S. citizen mother. *Statement from Applicant on Form I-290B*, dated May 26, 2006. She submits additional translations of her parents' divorce decree as evidence that legal custody of her was awarded to her mother by mutual agreement.

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 13 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 has resided in the legal custody of her mother, such that she has satisfied the requirements of section 320 of the Act. 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 has provided documents in connection with her parents divorce. Though she previously submitted a copy of a custody agreement that was partially translated by her mother, she now provides a complete translation of this document performed by a separate translator. This document reflects that the applicant's parents appeared before an Attorney Notary Republic on May 8, 2000<sup>1</sup> and executed an agreement that, upon their divorce, the applicant's mother would retain custody of the applicant. The AAO finds no cause to question the authenticity of this document and the custody agreement made by the applicant's parents.

The director found that the record does not clearly show that the custody agreement was made a part of the applicant's parents' divorce, thus it does not serve as conclusive evidence that the applicant's mother in fact obtained legal custody of the applicant. However, the AAO observes that the copy of the custody agreement and the copy of the divorce decree bear the same government seal and hand-written notation, which suggests they are both considered official documentation of the Dominican Republic. Further, it is noted that the custody agreement predates the divorce decree, which supports that it was executed in preparation for the divorce and was considered a part thereof. The AAO finds that the applicant has provided sufficient evidence to show by a preponderance that her mother obtained legal custody of her upon the divorce of her parents.

The record reflects that the applicant was admitted into the United States as a permanent resident on August 15, 1997, and that the applicant's mother became a naturalized U.S. citizen on April 14, 2005. Both events occurred prior to the applicant's eighteenth birthday. The applicant has submitted adequate documentation to show that she was residing in the legal and physical custody of her mother beginning as early as June 21, 2000, the date of her parents' divorce. Based on the foregoing, the applicant has established that she met each of the requirements of section 320 of the Act, and thus she became a U.S. citizen by operation of law.

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 met her burden. The appeal will therefore be sustained and the application will be approved.

**ORDER:** The appeal is sustained.

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<sup>1</sup> It is noted that the translation of the custody agreement contains an error in the date, as it reflects that the agreement was executed on May 8, 2002, when the original indicates that it was executed on May 8, 2000.