



U.S. Citizenship
and Immigration
Services

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FILE:

Office: NEW YORK, NEW YORK

Date: JUN 08 2006

IN RE:

Applicant:



APPLICATION: Application for Certificate of Citizenship under § 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, 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 the Dominican Republic on March 21, 1988. The applicant's mother is not a U.S. citizen. The applicant's father became a naturalized U.S. citizen on July 3, 2003, when the applicant was fifteen years old. The applicant's parents were married at the time the applicant was born, and they divorced in the Dominican Republic in 1990. The applicant was admitted into the United States as a lawful permanent resident on May 9, 1995, when he was seven years old. He seeks a certificate of citizenship under § 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 resided in the United States in the legal custody of his U.S. citizen parent, as required by § 320 of the Act. The application was denied accordingly. On appeal, the applicant, through his father, asserts that although the divorce decree between his parents awarded legal custody to the applicant's mother, the applicant's father assumed legal custody prior to the applicant's eighteenth birthday.

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 had 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 and his father became a naturalized U.S. citizen prior to the applicant's eighteenth birthday. The applicant therefore meets the requirements set forth in subsections (a)(1) and (a)(2) of § 320 of the Act.

Legal and physical custody requirements set forth in § 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 resided in his father's physical custody since 1995, when the applicant was admitted into the United States. Nevertheless, the AAO finds that the evidence in the record fails to establish that the applicant resided in his father's legal custody subsequent to his parents' divorce, as required by § 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 present matter, the divorce decree of 1990 reflects that the applicant's mother obtained a judicial grant of custody over the applicant. The record contains no evidence to establish that the applicant's father obtained an amended court order awarding him legal custody over the applicant, notwithstanding the

applicant's mother's declaration allowing his father to obtain custody over the applicant. The AAO therefore finds that the applicant has failed to establish that he resided in the legal custody of his U.S. citizen mother, as set forth in § 320(a)(3) of the Act.

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.