



U.S. Citizenship
and Immigration
Services

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FILE:



Office: DENVER, COLORADO

Date: JUN 28 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, Denver, Colorado, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on September 4, 1988 in Mexico. The applicant's father, who was born in Mexico and became a naturalized U.S. citizen on January 7, 2000, adopted the applicant on August 2, 2004. The applicant's natural mother was also born in Mexico, and she married the applicant's father on April 13, 2001. The applicant indicates that his father petitioned for his mother, and that his mother is now a lawful permanent resident (LPR). The applicant entered the United States without inspection in 1990, and he began to live with his father in 1996. There is no evidence on the record that the applicant was ever admitted as an LPR. The applicant seeks a certificate of U.S. citizenship under § 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The district director found that the applicant did not meet the definition of "child" set forth in § 101(b)(1)(E)(i) of the Act, 8 U.S.C. § 1101(b)(1)(E)(i), because he had not been under the legal custody of his adoptive father for two years prior to the adjudication of the application for a certificate of citizenship. The director also noted that the applicant had not been admitted for lawful permanent residence, as required under § 320 of the Act. Accordingly, the director concluded that the applicant failed to meet the requirements for a certificate of citizenship as set forth in § 320 of the Act, and the application was denied.

On appeal, the applicant states that he lived with his adoptive father since 1996, and that his parents married in 2001. The applicant asserts that he therefore meets the requirement of having resided in his father's legal custody for two years prior to this adjudication. The AAO has reviewed the entire record and concludes that the applicant does not qualify as a child under § 101(b)(1)(E)(i) of the Act, and he has not met the requirements described at § 320 of the Act. He is thus ineligible for a certificate of citizenship at this time.

Section 320 of the Act states in pertinent part:

- (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.
- (b) Subsection (a) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

Section 101(b)(1)(E) of the Act states, in pertinent part, that the term "child" means an unmarried person under twenty-one years of age who is-

- (i) [A] child adopted while under the age of sixteen years if the child has been in the

legal custody of, and has resided with, the adopting parent or parents for at least two years: Provided, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act; or

The record in the present case contains an adoption decree establishing that the applicant was under the age of sixteen when his father adopted him. The applicant's father's legal custody began on the date the applicant was adopted rather than when he began to live with his father or the date his parents married each other. Precedent legal decisions have held that the two-year residence requirement set forth in § 101(b)(1)(E) of the Act may be satisfied either before or after an adoption. *See Matter of Repuyan*, 19 I&N Dec. 119, 120 (BIA 1984). Legal custody, however, 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 instant case, the applicant's father obtained legal custody over the applicant through a court ordered adoption decree dated August 2, 2004. Hence, the applicant will not meet the legal custody requirements set forth in § 101(b)(1)(E)(i) of the Act until August 2, 2006. As of this date, the applicant does not qualify as a "child" under § 101(b)(1)(E)(i) of the Act.

The provisions set forth in § 320 of the Act reflect that, in order to qualify for citizenship, the applicant must demonstrate that he meets the definition of "child" set forth in § 101(b)(1)(E) of the Act prior to his eighteenth birthday. The applicant will turn eighteen years old on September 4, 2006. Thus, the applicant will meet the definition of "child" prior to his eighteenth birthday. Nevertheless, the applicant must also establish that he has been admitted for lawful permanent residence prior to his eighteenth birthday, as set forth in § 320(a)(3) of the Act. At the present time, there is no evidence that the applicant has met this requirement, therefore, he is ineligible for a certificate of citizenship under § 320 of the Act.

8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. In this case, the burden has not been met and the appeal will be dismissed.

ORDER: The appeal is dismissed.