U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILES: [redacted] Office: BUFFALO, NY Date: NOV 14 2006

IN RE: Applicants: [redacted]

APPLICATION: Applications 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 applications were denied by the District Director, Buffalo, New York, and are now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicants were born in Yemen on February 8, 1991, August 10, 1992, and October 4, 1993. The applicants' father, [redacted], was born in Yemen on June 1, 1967, and he is not a U.S. citizen. The applicants' natural mother, [redacted] was born in Yemen and she is deceased. The record does not reflect, and the applicants do not assert, that their natural mother was a U.S. citizen. The applicants were under the care of their paternal grandmother upon the death of their mother in 1994.

The applicants' father married a U.S. citizen, [redacted], on January 4, 1996. The record reflects that the applicants were under the care of Ms. [redacted] beginning in March 2002. On July 31, 2003, the applicants were admitted to the United States as permanent residents, pursuant to the U.S. citizenship of Ms. [redacted][1] On August 11, 2004, the applicants' father executed a Judicial Consent document before the Surrogate's Court, County of Erie, State of New York (Surrogate Court), consenting to his wife's, Ms. [redacted] adoption of the applicants. On November 5, 2004, a judge for the Surrogate Court granted the adoption of the applicants by Ms. [redacted]. On August 3, 2005, the applicants' paternal grandmother executed a document before the Yemeni Ministry of Justice, General Department of Authentication, relinquishing any right she held to the custody of the applicants to Ms. [redacted]

The applicants presently seek a certificate of citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, based on the U.S. citizenship of their mother, Ms. [redacted]

The district director concluded that the applicants had failed to establish they resided in the United States in the legal custody of their adoptive U.S. citizen parent for at least two years, thus they failed to meet the definition of child contained in section 101(b)(1)(E)(i) of the Act. The application was denied accordingly.

On appeal, the applicants, through their mother, assert that they have resided in the legal custody of their mother since March 2002.

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 applicants were under age eighteen on February 27, 2001, they meet 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.

[1] Ms. Abdallah was the applicants' stepmother at the time of the applicants' admission as permanent residents.

(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) of this section 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) of this title.

Section 101(b)(1) of the Act provides that the definition of "child" includes the following individuals:

> (E)(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 chapter

As noted above, Ms. married the applicants' father on January 4, 1996, when the applicants were ages two, three, and four. On November 5, 2004, Ms. [redacted] formally adopted the applicants. Based on this fact, the district director analyzed whether the applicants met the requirements of section 101(b)(1)(E)(i) of the Act that establishes criteria for an individual to meet the definition of child based on a relationship to an adoptive parent.

The district director found that the applicants were not in the legal custody of Ms. [redacted] until November 5, 2004, the date that Ms [redacted] formally adopted the applicants. The applicants were under the care of their paternal grandmother after the death of their natural mother in 1994. The record reflects that, in March 2002, the applicants left the care of their grandmother and began residing with their father and Ms. [redacted] The applicants' grandmother confirmed that the applicants resided with Ms. [redacted] nd the applicants' father beginning in March 2002, and that she relinquished any right to custody of the applicants. *Statement from Applicant's Grandmother Yemeni Ministry of Justice, General Department of Authentication*, dated August 3, 2005. On August 11, 2004, the applicants' father executed a Judicial Consent document consenting to Ms. [redacted]'s adoption of the applicants, and such adoptions were granted on November 5, 2004. Thus, the record shows that Ms. [redacted] had legal and physical custody of the applicants on November 5, 2004.

The applicants, through their mother, assert that they have resided in the legal custody of their mother since March 2002. The AAO notes that the applicants have resided in the same household as Ms. [redacted] and their father since March 2002. However, while this fact suggests that the applicants have been in the physical custody of Ms. [redacted] since March 2002, it does not reflect that Ms. [redacted] had legal custody of them prior to November 5, 2004. 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). The applicants have not shown that Ms. [redacted] had legal custody of them prior to the date that she adopted them, either by court decree or operation of the law of New York, the jurisdiction in which they resided.

The present applications were filed on November 2, 2005. As the applicant's mother began to have both legal and physical custody of them on November 5, 2004, the applicants had accrued less than one year of residence with Ms. [redacted] in her legal and physical custody as of the date of their applications. Therefore, the applicants have not shown that they meet the requirements of section 101(b)(1)(E)(i) of the Act. For this

reason, the applications may not be approved.[2]

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 applicants have not met their burden. The appeal will therefore be dismissed.[3]

ORDER: The appeal is dismissed.

[2] The applicants have not shown that the present application may be approved, as they did not establish that they met all of the requirements of section 320 of the Act as of the date that the application was filed. However, this decision is without prejudice to the applicants, and they may file a new Form N-600 application if they feel they now meet the requirements of section 320 of the Act. The AAO observes that, if the applicants have continued to reside with Ms. [redacted] in her legal and physical custody, they have now accrued over two years of such residence as contemplated by section 101(b)(1)(E)(i) of the Act.

[3] It is noted that the district director issued a single decision to address the three Form N-600 applications of the applicants. The district director noted in the decision that the applicants may appeal by filing a Form I-290B with the required fee. The applicants filed a single Form I-290B as instructed. Thus, the instant decision of the AAO will have effect for each of the three applications.