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U.S. Citizenship
and Immigration
Services

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: SEP 20 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 Director, California Service Center, 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 Ghana on December 22, 1995. The applicant's mother, [REDACTED] was born in Ghana on February 9, 1975, and she became a naturalized U.S. citizen on December 18, 2003, when the applicant was seven years old. The applicant's father, [REDACTED] was born in Ghana, and the record does not reflect that he is a U.S. citizen. The applicant's parents were divorced on November 30, 2000. The applicant was admitted into the United States as a lawful permanent resident on May 2, 1998, when he was two 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 U.S. in the legal custody of his U.S. citizen parent, as required by section 320 of the Act. The application was denied accordingly.

On appeal, the applicant's mother asserts that she provided sufficient evidence to show that she has legal custody of the applicant. *Statement from the Applicant's Mother on Form I-290B*, dated April 22, 2006. The applicant submits a previously provided affidavit from his mother attesting that a court awarded her custody of the applicant upon the divorce of the applicant's parents. *See Declaration of Applicant's Mother*, dated February 27, 2006.

The record contains a statement from the applicant's mother on Form I-290B; a notarized declaration from the applicant's mother; copies of marriage and divorce documents for the applicant's mother; a copy of the applicant's permanent resident card; a copy of the applicant's mother's naturalization certificate; a copy of the applicant's birth certificate, and; a letter from the applicant's school. The entire record was considered in deciding this appeal.

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 five 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 in 1998, and that the applicant's mother became a naturalized U.S. citizen in 2003. Both events occurred prior to the applicant's eighteenth birthday. The applicant therefore meets the requirements set forth in subsections (a)(1) and (a)(2) of section 320 of the Act.

Legal and physical custody requirements set forth in section 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 applicant's mother claims that the applicant has resided with her from November 30, 2000 until the present. *Declaration of Applicant's Mother*, dated February 27, 2006. In her affidavit, the applicant's mother further asserted that she was awarded legal and physical custody of the applicant by a court upon the dissolution of her marriage on November 30, 2000. *Id.* Nevertheless, the AAO finds that the applicant has not submitted sufficient evidence to show that his mother was given legal custody of him, as required by section 320(a)(3) 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).

In the present matter, the applicant has not submitted a document from a court to show that his mother was awarded legal custody of him. The applicant's mother submitted a notarized affidavit attesting that a court awarded her legal custody, yet this document does not reflect that it was issued or approved by a court with jurisdiction over custody matters. While the applicant's mother referenced court proceedings in her affidavit, she did not explain whether official documentation was issued by the court to reflect a custody order, and if so, whether such documentation is available. The record further lacks evidence that the applicant's mother has uncontested custody of the applicant, such as a statement from the applicant's father. *See Matter of M*, 3 I&N Dec. at 856. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Accordingly, the AAO finds that the applicant has failed to establish that he resided in the legal custody of his U.S. citizen mother, as required by section 320(a)(3) of the Act.

The AAO notes that the record does not affirmatively indicate that the applicant is ineligible for a certificate of citizenship. The application fails for a lack of sufficient documentation. Though the present application may not be approved, the applicant is free to file a new application with additional evidence to clearly show that he meets the requirements of section 320 of the Act. However, based on the foregoing, the present appeal must be dismissed.

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 not met his burden. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.