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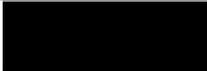
U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEW YORK, NY

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.

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 Jamaica on December 7, 1988. The applicant's father, [REDACTED] was born in Jamaica on August 26, 1967, and he became a naturalized U.S. citizen on September 17, 1999, when the applicant was ten years old. The applicant's mother, [REDACTED], was born in Jamaica, and the record does not reflect that she is a U.S. citizen. The applicant's parents were never married. At an interview on June 18, 2002, the applicant, through his father, stated that he resides in Jamaica with his mother, yet he enters the United States on holidays pursuant to an immigrant visa. 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 United States 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 father asserts that although the applicant lives in Jamaica with his mother and he attends school there, he does not reside in Jamaica. *Statement from Applicant's Father on Form I-290B*, dated July 31, 2002. The applicant's father indicates that the applicant will commence residing and attending school in the United States in the future. *Id.*

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 twelve 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 resides in Jamaica with his mother, and he attends school there. Though the applicant's father attested that the applicant visits the United States for the Easter and Christmas holidays, the applicant has provided no evidence or indication that he has visited the United States at other times, or that he has held a permanent address here. The applicant's father claims that the applicant does not reside in Jamaica, yet the record lacks documentation to show that the applicant in fact resides elsewhere, including the United States. The applicant's father contends that the applicant will reside in the United States in the future, yet Citizenship and Immigration Services (CIS) may not approve an application based on speculation that the

applicant will qualify for the benefit sought at a future date. *See e.g. Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Thus, the applicant has not shown that he “is residing in the United States in the legal and physical custody of the citizen parent” as required by section 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.