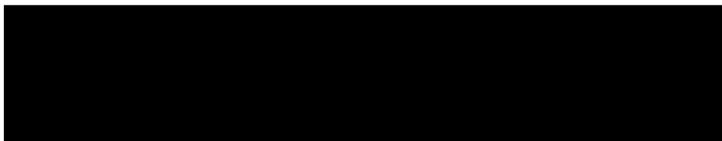




U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



E2

FILE:



Office: BUFFALO, NY

Date:

AUG 29 2007

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 District Director, Buffalo, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on August 2, 1983 in Laos. The applicant's father, [REDACTED], became a naturalized U.S. citizen on December 4, 1998, when the applicant was 15 years old. The applicant's mother, [REDACTED] is a lawful permanent resident of the United States. The applicant was admitted to the United States as a refugee and became a lawful permanent resident on January 10, 1992, when he was nine years old. The applicant seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, based on the claim that he acquired U.S. citizenship through his father.

The district director found the applicant ineligible for issuance of a Certificate of Citizenship because, due to his incarceration, he could not appear before a CIS officer for administration of the required Oath of Allegiance. The district director further found that the applicant had failed to establish that his father had legal and physical custody of him. The applicant's claim was denied accordingly.

On appeal, the applicant maintains that he is eligible for a Certificate of Citizenship pursuant to section 320 of the Act, 8 U.S.C. § 1431. The appeal is accompanied by a copy of the applicant's father's Certificate of Naturalization, tax and school records, and other documentation seeking to establish that the applicant's father had legal and physical custody of the applicant. The appeal is also accompanied by a copy of the applicant's Form N-600, with additional information included in Part 4 relating to the applicant's parents' marriage.

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 18th birthdays as of February 27, 2001. Because the applicant was eight years old on February 27, 2001, he meets the age requirement for benefits under the CCA.

Section 320 of the Act, 8 U.S.C. § 1431, 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 AAO notes that the record does not contain a copy of the applicant's birth certificate. The record indicates that the applicant was admitted to the United States as a refugee from Laos. The record reflects that the applicant became a lawful permanent resident in 1992 at the age of 9, and that the applicant's father became a naturalized U.S. citizen in 1998 when the applicant was 15. The AAO further notes that the record does not contain the applicant's parents' marriage certificate, but information in the record suggests that the applicant's parents were married in 1981 in Laos and remain married. The record contains evidence

establishing that the applicant resided with his parents prior to the age of 18. According to the regulations, at 8 C.F.R. § 320.1, legal custody is presumed in the case of a biological child residing with his married parents. The information in the record suggests that the applicant acquired U.S. citizenship automatically pursuant to section 320 of the Act, 8 U.S.C. § 1431. The AAO therefore finds that the applicant has established that he acquired U.S. citizenship as claimed.

The AAO notes that the applicant is currently unable to appear before a CIS Officer to take the Oath of Allegiance, and does not appear to be eligible for a waiver of the oath requirement. Upon taking of the Oath of Allegiance, the applicant will be eligible for issuance of a certificate of citizenship pursuant to the section 341 of the Act, 8 U.S.C. § 1452. The AAO notes, however, that citizenship vests automatically under section 320 of the Act, 8 U.S.C. § 1431, and does not depend on the issuance of a certificate of citizenship.

The applicant has met his burden of proof to establish, by a preponderance of the evidence, that he acquired U.S. citizenship under section 320 of the Act, 8 U.S.C. § 1431. The appeal will be sustained.

ORDER: The appeal is sustained.