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

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[redacted]

FILE: [redacted] Office: MIAMI, FLORIDA (TAMPA) Date: AUG 29 2007

IN RE: Applicant: [redacted]

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, Miami (Tampa), Florida, 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 June 12, 1989 in Trujillo, Peru. The applicant's parents, as reflected on his birth certificate, are [redacted] and [redacted] The applicant's parents cohabitated, but were never married to each other. The applicant's father became a naturalized U.S. citizen on September 21, 2001. The applicant was admitted to the United States as a lawful permanent resident on August 18, 2005. The applicant turned 18 years old on June 12, 2007. 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 concluded, in relevant part, that the applicant had failed to establish that he was legitimated by his father and therefore not eligible for citizenship under section 320 of the Act. The application was denied accordingly.

On appeal, the applicant, through his father, maintains that he was legitimated under Peruvian law. In support of his claim, the applicant submits a letter-brief with several attachments including a copy of the relevant sections of the Peruvian Civil Code, letters from Peruvian lawyers analyzing the applicant's circumstances, and a letter from the applicant's mother. *See* Letter-Brief from Applicant's Father dated May 11, 2007.

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 under 18 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.

Section 101(c) of the Act, 8 U.S.C. § 1101(c) states, in pertinent part, that for Title III naturalization and citizenship purposes:

> The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere . . . if such legitimation . . . takes place before the child reaches the age of 16 years . . . and the child

> is in the legal custody of the legitimating . . . parent or parents at the time of such legitimation

The record reflects that the applicant was admitted to the United States as a lawful permanent resident in 2005, and that the applicant's father has been a naturalized U.S. citizen since 2001. The applicant turned 18 years old on June 12, 2007. The question before the AAO is whether the applicant was legitimated by, and in the legal custody of his father.

The AAO notes the Board of Immigration Appeals' (the Board) holding in *Matter of Torres*, 22 I.&N. Dec. 28, 31-32 (BIA 1998) that "a child born out of wedlock who was under 18 years of age on November 14, 1984, or who was born on or after that date, may qualify as the legitimated child of his or her father, if the requirements . . . for proof of "extramarital filiation" are met before the child's 18th birthday." The Board, citing Article 387 of the Peruvian Civil Code, explains that "(r)ecognition and the ruling declaring paternity or maternity are the only methods of proof of extramarital filiation."

The AAO notes that the applicant has established "recognition" by virtue of the fact that his father's name is listed on the birth certificate, in accordance with Articles 390 and 391 of the Peruvian Civil Code. As such, the AAO finds that the applicant has established that he was legitimated and meets the definition of "child" in section 101(c) of the Act, 8 U.S.C. § 1101(c).

The AAO further finds that the applicant's father had legal custody of the applicant as required by section 320(a)(3) of the Act, 8 U.S.C. § 1431(a)(3). In this regard, the AAO notes that the Board stated in *Matter of Rivers*, 17 I.&N. Dec. 419 (BIA 1980), where a child has been legitimated, the natural father is presumed to have legal custody of his child in the absence of affirmative evidence indicating otherwise. *See also* 8 C.F.R. § 320.1.

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. The applicant in the present case has met his burden. Accordingly, the AAO finds that the applicant acquired citizenship pursuant to the section 320 of the Act, 8 U.S.C. § 1431 and the appeal will be sustained.

ORDER: The appeal is sustained.