

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

'PUBLIC COPY

#2

JUN 01 2007

FILE:

Office: CHICAGO, IL

Date:

IN RE:

Applicant:

APPLICATION:

Application for Certificate of Citizenship

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, Chicago, Illinois. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application denied.

The record reflects that the applicant was born on August 22, 1991, in Jordan. The applicant's father was born in Chicago, Illinois on February 24, 1970, and he is a U.S. citizen. The applicant's mother was born in Jordan. She is not a U.S. citizen. The applicant's parents were married in Jordan on July 30, 1990. They divorced in Jordan on May 7, 1997. The applicant presently seeks a certificate of citizenship pursuant to sections 320 and 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1431 and 1401(g).

The district director determined that the applicant did not meet the requirements for automatic citizenship under section 320 of the Act, because she failed to establish that she resided in the legal and physical custody of her U.S. citizen father. The applicant's Form N-600, Application for Certificate of Citizenship (N-600 Application) was denied accordingly. The district director did not address the applicant's acquisition of citizenship claim under section 301(g) of the Act.

On appeal, the applicant concedes, through her grandfather, that her father lives in Ohio and that she lives in Illinois. The applicant asserts that her grandparents obtained legal guardianship over her in December 2004, and she asserts that she has lived with her grandparents since her parent's divorce in 1997. The applicant submits a copy of her grandparent's December 28, 2004, Circuit Court of Cook County, Illinois, Guardianship Order. The application also submits a copy of her grandfather's 1972, Certificate of Naturalization.

Section 320(a) of the Act permits a child born outside of the U.S., who now resides in the United States, to automatically become a U.S. citizen upon fulfillment of the following conditions:

- (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.

In the present matter, the applicant has established that she is under the age of eighteen and that her father is a United States citizen. The applicant additionally established that she was admitted into the United States as a lawful permanent resident on April 15, 2004. The applicant has failed, however, to establish that she has resided in the legal and physical custody of her U.S. citizen father at any time since April 15, 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). It is noted that the applicant's parents' divorce decree, contained in the record, fails to address legal or physical custody over the applicant. 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). The applicant has failed to establish that her father has actual, uncontested custody over the applicant. The applicant's U.S. immigrant visa information, contained in the record, indicates that the applicant's father resided in Ohio, and

that the applicant was in Jordan prior to her admission into the United States as a lawful permanent resident. The record reflects further that subsequent to her admission into the United States as a lawful permanent resident, the applicant's grandparents were awarded legal guardianship over the applicant, on December 28, 2004. Moreover, statements made on appeal and in the applicant's Form N-600 application reflect that the applicant has not been in the actual, uncontested custody of her father in Ohio since her April 2004, admission into the United States as a lawful permanent resident. Accordingly, the applicant has failed to establish, by a preponderance of the evidence, that she resided in the legal custody of her father pursuant to a lawful admission for permanent residence, as required by section 320(a)(3) of the Act.

The applicant additionally failed to establish that she has resided in the physical custody of her U.S. citizen father since her admission into the United States as a lawful permanent resident. Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33), defines the term, "residence" as a person's, "[p]lace of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent." The applicant's Form N-600 application and the evidence contained in the record reflect that the applicant's father has resided in Ohio since at least 2004, and that the applicant has resided with her grandparents in Chicago, Illinois since her admission into the United States as a lawful permanent resident. Because the applicant has failed to establish that she meets the requirements set forth in section 320(a)(3) of the Act, she does not qualify for citizenship under section 320 of the Act.

It is noted that the AAO conducts the final administrative review and enters the ultimate decision for U.S. Citizenship and Immigration Services (CIS) on all immigration matters that fall within its jurisdiction. The AAO reviews each case de novo as to questions of law, fact, discretion, or any other issue that may arise in an appeal that falls under its jurisdiction. Because the AAO engages in de novo review, the AAO may deny an application or petition that fails to comply with the technical requirements of the law, without remand, even if the district or service center director does not identify all of the grounds for denial in the initial decision. *See Helvering v. Gowran*, 302 U.S. 238, 245-46 (1937); *see also, Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

The applicant was born in Jordan on August 22, 1991, to a U.S. citizen father. The AAO will thus also consider the applicant's eligibility for U.S. citizenship under at birth, acquisition of citizenship provisions contained in the Act. "The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth." *See Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9th Cir. 2000) (citations omitted). In the present matter section 301(g) of the Act applies to the applicant's acquisition of citizenship claim.

Section 301(g) of the Act provides in pertinent part, that the following shall be citizens of the United States at birth:

[A] person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years

In order to meet the physical presence requirements set forth in section 301(g) of the Act, the applicant must establish that her father was physically present in the U.S. for five years between his birth on February 24,

1970, and the applicant's birth on August 22, 1991, and that two of the years occurred after February 24, 1984, when the applicant's father turned fourteen. The record contains no evidence to establish or indicate that the applicant's father was physically present in the United States for the requisite time period. The applicant therefore failed to establish that she acquired U.S. citizenship at birth, pursuant to section 301(g) of the Act.

It is further noted that section 322 of the Act, 8 U.S.C. § 1433, does not apply to the applicant's case, as the provision applies only to children born and residing outside of the United States in the legal and physical custody of the U.S. citizen parent.¹

The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. The AAO finds that the applicant has not met her burden of proof in the present matter. The appeal will therefore be dismissed, and the application denied.

ORDER: The appeal is dismissed. The application is denied.²

¹ Section 322 of the Act provides in pertinent part, that:

(a) A parent who is a citizen of the United States . . . may apply for naturalization on behalf of a child born outside of the United States who has not acquired citizenship automatically under section 320. The Attorney General [now Secretary, Department of Homeland Security "Secretary"] shall issue a certificate of citizenship to such applicant upon proof, to the satisfaction of the Attorney General [Secretary], that the following conditions have been fulfilled:

- (1) At least one parent . . . is a citizen of the United States, whether by birth or naturalization.
- (2) The United States citizen parent--
 - (A) has (or, at the time of his or her death, had) been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years; or
 - (B) has . . . a citizen parent who has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years.
- (3) The child is under the age of eighteen years.
- (4) The child is residing outside of the United States in the legal and physical custody of the applicant
- (5) The child is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.

² The present decision is without prejudice to the applicant's filing a new Form N-600 application, or a Form N-400, Application for Naturalization pursuant to section 316 of the Act, 8 U.S.C. § 1427, if eligible to do so.