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U.S. Citizenship
and Immigration
Services

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MAY 08 2007

FILE:

Office: ANCHORAGE, ALASKA

Date:

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:

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, Anchorage, Alaska, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on August 18, 1989 in Minalin, Philippines. The applicant's father, [REDACTED] was born on November 6, 1962 also in the Philippines. He became a naturalized U.S. citizen on June 24, 2003, when the applicant was 13 years old. The applicant's mother, [REDACTED] is a citizen of the Philippines. The applicant's parents were never married to each other. The applicant was admitted to the United States as a lawful permanent resident on September 16, 2006, at the age of 17. 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 she acquired U.S. citizenship at birth through her father.

The district director concluded that the applicant had failed to establish that she resided in the U.S. in the legal custody of her U.S. citizen parent, as required by section 320 of the Act. The application was denied accordingly.

On appeal, the applicant asserts that her father has full parental custody. In support of her claim, the applicant submits a copy of her Permanent Resident Card, an airline ticket, pictures depicting her with her father, a copy of receipts for a course registration and a California ID card application, and a copy of a bank account transaction.

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 12 years old on February 27, 2001, she 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 record reflects that the applicant was admitted to the United States as a lawful permanent resident in 2006, and that the applicant's father became a naturalized U.S. citizen in 2003. The applicant is still under 18 years of age.¹ The record contains evidence that the applicant is currently in her father's physical custody. Nevertheless, there is no evidence to establish that the applicant's father has been awarded legal custody as required by subsection (a)(3) of section 320 of the Act, 8 U.S.C. § 1431(a)(3).

¹ Should the applicant's father obtain an order granting him legal custody before August 17, 2007 (her 18th birthday), the applicant will automatically acquire U.S. citizenship.

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). Where the parents were never married, the mother is presumed to retain legal custody by natural right. *Id.* at 41.

The AAO notes that, as is well established, “[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship.” *Fedorenko v United States*, 449 U.S. 490, 506 (1981). The applicant in the present case is not in the legal custody of her father. Accordingly, the AAO finds that she is not eligible for citizenship pursuant to the section 320 of the Act, 8 U.S.C. § 1431.

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 not met her burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.