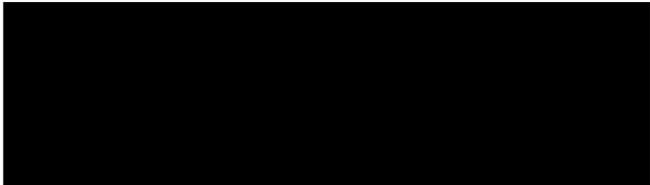




U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**



*E2*

FILE:



Office: ST. PAUL, MN

Date: **MAY 23 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:



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, St. Paul, Minnesota. 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 in Somalia on February 7, 1992. At birth, the applicant's name was [REDACTED]. The applicant was adopted by a U.S. citizen on December 2, 2005. Pursuant to his adoption order, the applicant's name was changed to "[REDACTED]". On January 16, 2001, the applicant was admitted into the United States as a lawful permanent resident. The applicant presently seeks a certificate of U.S. citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The district director determined that the applicant had failed to establish that he met the legal custody requirements of section 101(b)(1)(E) of the Act, 8 U.S.C. 1101(b)(1)(E). Accordingly, the district director found that the applicant did not meet the requirements of section 320(b) of the Act, and the application was denied.

On appeal the applicant asserts, through counsel, that he has been in the legal custody of his adoptive U.S. citizen father since 2001, as defined by federal case law, and that he therefore meets the legal custody requirements contained in sections 101(b)(1)(E) and 320(b) of the Act.

Section 320 of the Act provides 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.
- (b) Subsection (a) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

Section 101(b)(1)(E) of the Act provides in pertinent part that the term "child" means an unmarried person under twenty-one years of age who is:

[A] child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years.

It is noted that the two-year residence requirement set forth in section 101(b)(1)(E) of the Act may be satisfied either before or after an adoption. *See Matter of Repuyan*, 19 I&N Dec. 119, 120 (BIA 1984).

The AAO finds that the evidence contained in the record establishes that the applicant was adopted prior to his sixteenth birthday. The evidence additionally establishes that the applicant has resided in the *physical* custody of his adoptive father ([REDACTED]) for at least two years. The record contains a *Findings Order*

and Decree of Adoption, from the State of Minnesota, County of Hennepin, District Court, Juvenile Division, Fourth Judicial District, reflecting that the applicant was adopted by [REDACTED] on December 2, 2005, at the age of thirteen. The adoption decree reflects that [REDACTED] has had physical custody of the applicant since April 3, 2001. A July 12, 2001, *Findings of Fact and Order Establishing Child Support* from the State of Minnesota, Hennepin County, District Court, Fourth Judicial District, also reflects that the applicant has resided with [REDACTED] since 2001. Accordingly, the applicant meets the age and residence requirements contained in section 101(b)(1)(E) of the Act.

The AAO finds, however, that the applicant has failed to establish that he meets the section 101(b)(1)(E) of the Act requirement that he reside in the legal custody of [REDACTED] for at least two years. Counsel indicates on appeal that [REDACTED] uncontested status as the applicant's Relative Caretaker, pursuant to the July 12, 2001, *Findings of Fact and Order Establishing Child Support* from the State of Minnesota, Hennepin County, District Court, Fourth Judicial District, establishes that [REDACTED] has had actual undisputed physical custody over the applicant since 2001. Counsel asserts that such physical custody has been judicially recognized as legal custody for immigration purposes, and that the applicant has therefore established that he was in the legal custody of [REDACTED] since 2001. In support of his assertions, counsel refers to the U.S. Third Circuit Court of Appeals decision, *Bagot v. Ashcroft*, 398 F.3d 252, 267 (3<sup>rd</sup> Cir. 2005.) Counsel also refers to the Board of Immigration Appeals (Board) decision, *Matter of M-*, 3 I&N Dec. 850 (BIA 1950.) The AAO is unconvinced by counsel's assertions. In *Bagot v. Ashcroft*, the U.S. Third Circuit Court of Appeals refers to *Matter of M-'s* holding that:

[I]n the absence of judicial determination or judicial or statutory grant of custody in the case of legal separation of the parent of a person claiming citizenship under section 314(c), the parent having uncontested custody is to be regarded as having "legal custody" of the person concerned for the purpose of determining that person's status under section 314(c).

See *Bagot v. Ashcroft* at 259. The AAO notes that the *Bagot v. Ashcroft* and *Matter of M-* decisions referred to by counsel pertain to legal custody determinations of a *parent*. Neither decision states or indicates that a *relative caretaker* or *legal guardianship* relationship establishes legal custody over a child. Furthermore, the Board stated clearly in *Matter of Harris*, 15 I & N Dec. 39 (BIA 1970), that legal custody vests "by virtue of either a natural right or a court decree." In the present matter, [REDACTED] is not the applicant's natural father. He thus did not obtain legal custody over the applicant by virtue of a natural right. Rather, [REDACTED] obtained legal custody over the applicant by virtue of a court adoption decree on December 2, 2005, less than two years ago. The applicant therefore failed to satisfy the requirement that he reside in the legal custody for at least two years as set forth in section 101(b)(1)(E) of the Act. Accordingly, the applicant does not meet the requirements contained in section 320(b) of the Act, and subsection (a) of section 320 of the Act does not apply in his case.

The regulation at 8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. In the present matter, the applicant has failed to establish that he meets the requirements for citizenship as set forth in section 320 of the Act. The appeal will therefore be dismissed and the application will be denied.

**ORDER:** The appeal is dismissed. The application is denied.<sup>1</sup>

<sup>1</sup> The present decision is without prejudice to the applicant's reapplying for a certificate of citizenship under section 320 of the Act, if and when he has been in his adoptive father's legal custody for at least two years.