

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



*Er*

FILE:



Office: NEW YORK, NY

Date:

**NOV 27 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*

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on February 25, 1989 in Egypt. The applicant's parents are Ibrahim and Ayat Ibrahim. The applicant's parents divorced in 1992. The applicant's father became a U.S. citizen upon his naturalization on May 24, 2001, when the applicant was 12 years old. The applicant was admitted to the United States as a lawful permanent resident on January 21, 2005, when he was 15 years old. The applicant presently seeks a certificate of citizenship claiming that he acquired U.S. citizenship from his father pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The district director denied the citizenship claim upon finding that the applicant was not in his father's legal or physical custody. The application was denied accordingly.

On appeal, the applicant, through counsel, states that his father maintained physical custody while he was studying in Egypt. The applicant submits evidence in support of this claim. The applicant does not address the issue of legal custody, except to state that he is submitting a copy of the applicant's parents' divorce decree.

Section 320 of the Act, 8 U.S.C. § 1431, was amended by the Child Citizenship Act of 2000 (the CCA). The amendments took effect on February 27, 2001 and apply only to persons who were not yet 18 years old as of February 27, 2001. Because the applicant was under the age of 18 on February 27, 2001, he is eligible for the benefits of section 320 of the amended Act. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

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.
  
- (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).

The applicant in this case has established that he was admitted as a lawful permanent resident of the United States and that his father naturalized prior to his 18<sup>th</sup> birthday. The applicant, however, has failed to establish that he was in the legal custody of his father after his parents were divorced. The AAO notes that the record contains a divorce decree indicating that the applicant's parents were divorced in 1992. The decree, however, does not address the question of legal custody. There is therefore no evidence in the record to establish that the applicant's father was awarded legal custody upon his divorce. Because the AAO finds that the applicant has failed to establish that he was in the legal custody of his father, it is unnecessary to address the issue of physical custody.

As such, the AAO finds that the applicant has failed to establish that his father was awarded legal custody subsequent to the divorce as required by subsection (3).

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). 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. In order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is “probably true” or “more likely than not.” *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). The AAO concludes that the applicant has not met his burden to establish, by a preponderance of the evidence, that he was in the legal custody of his father and therefore did not acquire U.S. citizenship upon his naturalization. The appeal will be dismissed.

**ORDER:** The appeal is dismissed.