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

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[REDACTED]

FILE:

[REDACTED]

Office: ANCHORAGE, AK

Date:

OCT 31 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:

[REDACTED]

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 Field Office Director, Anchorage, Alaska, 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 [REDACTED] in Mexico. The applicant's father, [REDACTED] became a naturalized U.S. citizen on February 27, 1998, when the applicant was 14 years old. The applicant's mother, [REDACTED] is not a U.S. citizen. The applicant was admitted to the United States as a lawful permanent resident on February 11, 1994, when he was 10 years old. The applicant seeks a certificate of citizenship pursuant to section 320 of the Immigration and Naturalization Act (the Act), 8 U.S.C. § 1431, claiming that he acquired U.S. citizenship upon his father's naturalization.

The field office director denied the applicant's citizenship claim finding that he was not residing in the physical custody of his U.S. citizen parent between February 2001 and the applicant's 18th birthday (on [REDACTED]). The application was denied accordingly.

On appeal, the applicant, through counsel, maintains that he was in the physical custody of his U.S. citizen parent in 2001. In support of his claim, the applicant submits employment records and letters verifying that he was living and working with his parents in Prescott, Arizona.

Section 320 of the Act, 8 U.S.C. § 1431, was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA benefits all persons who have not yet reached their eighteenth birthdays as of February 27, 2001. Because the applicant was under the age of 18 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.
- (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 record reflects that on the date of the applicant's father's naturalization, the applicant was under the age of 18 and residing with him pursuant to a lawful admission for permanent residence. Accordingly, the

applicant acquired U.S. citizenship automatically under section 320 of the Act, 8 U.S.C. § 1431, on February 27, 1998 (the date of the applicant's father's naturalization).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. 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 applicant in the present case has met his burden of proof and the appeal will be sustained.

ORDER: The appeal is sustained.

¹ The AAO notes that there is a discrepancy in the record relating to the applicant's residence in 2001. Given the AAO's conclusion, however, that the applicant acquired U.S. citizenship on February 27, 1998, it is unnecessary to address the question of residence in 2001.