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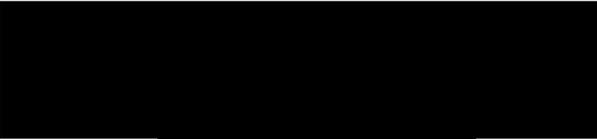
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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PUBLIC COPY



FILE: [Redacted]

Office: NEW YORK, NY

Date:

FEB 01 2008

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:

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, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on August 19, 1990 in Yemen. The applicant's parents are [REDACTED] and [REDACTED]. The applicant's parents were married in 1982 in Yemen. The applicant's father became a U.S. citizen upon his naturalization on December 5, 2000, when the applicant was 10 years old. The applicant was admitted as a lawful permanent resident of the United States on July 14, 2005, when he was 14 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 physical custody. The application was denied accordingly. This appeal followed.

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.

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 18th birthday. The AAO must determine whether the applicant automatically acquired U.S. citizenship upon his admission to the United States as a lawful permanent resident. Specifically, the question before the AAO is whether the applicant was in the legal and physical custody of his father.

The immigration regulations state, in relevant part, that USCIS "will presume that a US. citizen parent has legal custody of a child . . . absent evidence to the contrary, in the case of: (i) a biological child who currently resides with both natural parents (who are married to each other, living in marital union, and not separated.)" 8 C.F.R. § 320.1. The term physical custody is not defined in the regulations.

The record contains a copy of the applicant's parents' marriage certificate, indicating that they were married in 1982. The record, including the Form N-600, Application for Certificate of Citizenship, reflects that the applicant's parents remain married. The applicant's parents' 2004 Income Tax Return and the applicant's

immigrant visa documentation indicate that the applicant's parents were residing at [REDACTED] Albans, New York. The Form N-600, Application for Certificate of Citizenship, indicates that the applicant address was [REDACTED] Brooklyn, New York. The same address is listed for the applicant's father and mother on the Form N-600. Information provided at the applicant's interview suggests that the applicant's father departed the United States on July 2006 and returned in March 2007. It was also suggested that the applicant's address had changed.

The AAO finds that the applicant was in the legal and physical custody of his father upon his admission to the United States as a lawful permanent resident in 2005. The record indicates that the applicant was residing with his married parents when the Form N-600, Application for Certificate of Citizenship, was filed. U.S. citizenship under section 320 of the Act, 8 U.S.C. § 1431, is automatically acquired upon the fulfillment of the conditions listed. The AAO concludes that the applicant has established that he automatically acquired U.S. citizenship.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 AAO concludes that the applicant has met his burden to establish, by a preponderance of the evidence, that he acquired U.S. citizenship upon his admission to the United States as a lawful permanent resident. The appeal will therefore be sustained.

ORDER: The appeal is sustained.

¹ The AAO finds that the applicant's subsequent change of address, and his father's travel abroad, are immaterial because they occurred after he had automatically acquired U.S. citizenship.