



U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: PITTSBURGH, PA

Date: JUL 08 2008

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 Field Office Director, Pittsburgh, Pennsylvania, 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 May 6, 2984 in Lebanon. The applicant's parents are [REDACTED] and [REDACTED]. The applicant's parents were married in November 1981, and divorced in July 2001. The applicant was admitted to the United States as a lawful permanent resident on September 26, 1998, when the applicant was 14 years old. The applicant's father is a U.S. citizen, who acquired U.S. citizenship at birth from his father. 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 he acquired U.S. citizenship through his father.

The field office director concluded, in relevant part, that the applicant had failed to establish that he was in his father's legal and physical custody as required by section 320 of the Act. The director noted the applicant's and his aunt's testimony at the interview, the applicant's father's tax return, the applicant's school and military record. The application was denied accordingly.

On appeal, the applicant, through counsel, maintains that the director misinterpreted the testimony given by the applicant's aunt at the interview. The applicant submits, in relevant part, a letter verifying his school attendance and an affidavit from his father verifying that he lived with the applicant during the period in question. The applicant provides an explanation in response to the director's concerns regarding his father's taxes and his military enlistment in Lebanon.

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 under 18 years old 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.

The record reflects that the applicant was admitted to the United States as a lawful permanent resident in 1998, and that his father is a U.S. citizen. The AAO finds that the record reflects that the applicant was residing in his father's legal and physical custody in 2001, when the CCA went into effect.

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. Where the parents are married, and living together, both are presumed to have legal custody. *See* 8 C.F.R. § 320.1. Where, the applicant's parents were married but divorced or legally separated, the applicant must present a copy of a court document indicating which parent was awarded custody upon the separation. *Id.* In the absence of a judicial determination or grant of custody in a case of a legal separation of the parents, the parent having actual, uncontested custody of the child is to be regarded as having "legal custody." *See Matter of M*, 3 I&N Dec. 850, 856 (BIA 1950).

The record in this case indicates that the applicant's parents were divorced in July 2001. The record does not contain any court custody decree or custody agreement. Information in the record indicates that the applicant's parents had been separated since 2000, and that the applicant was residing in North Carolina with his father. In this regard, the AAO notes that the record contains an affidavit from the applicant's father, the father's 2001 income tax return listing the applicant's address, the applicant's school records for the school year 2000-2001 indicating that he was enrolled full time until May 2001, and the applicant's employment records for the summer 2001. The AAO finds that the record establishes, by a preponderance of the evidence, that the applicant was residing in the United States in the physical custody of his father. With respect to legal custody, the record reflects that the applicant's parents were not legally separated or divorced until July 2001, and that there was no court custody decree or agreement. Nevertheless, the applicant was in his father's actual, uncontested custody. Therefore, the AAO concludes that the applicant was in his father's legal custody and automatically acquired U.S. citizenship pursuant to 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 met his burden and the appeal will be sustained.

**ORDER:** The appeal is sustained