

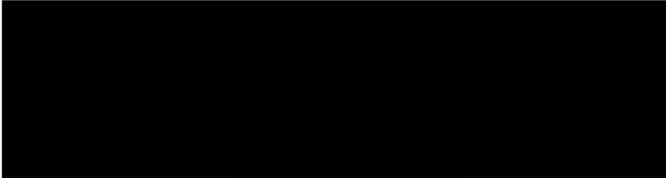
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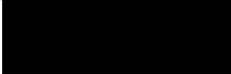
U.S. Citizenship
and Immigration
Services

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FEZ



FILE:



Office: NEW YORK, NY

Date: **JUL 17 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:

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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on August 14, 1993 in the Dominican Republic. The applicant's parents, as reflected in his birth certificate, are [REDACTED] and [REDACTED]. The applicant's parents were married in 1993, and divorced in 1996. The applicant's father was awarded legal custody of the applicant upon the divorce. The applicant was admitted to the United States as a lawful permanent resident on June 14, 2001, when he was 6 years old. The applicant's mother became a U.S. citizen on July 14, 2004, when the applicant was 8 years old. The applicant's father is not a U.S. citizen. 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 mother.

The district director concluded that the applicant had failed to establish that he was in the legal custody of his U.S. citizen mother, as required by section 320 of the Act. The application was denied accordingly.

On appeal, the applicant's mother states that her "ex-husband [the applicant's father] is going to transfer the legal custody of [the applicant to her]." See Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO.

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 is under 18 years old, 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 and that his mother became a U.S. citizen prior to his 18th birthday. The record contains the applicant's parents divorce decree, awarding legal custody of the applicant to his father. There is no indication in the record of any change in the applicant's legal custody. The applicant therefore cannot establish that he was in the legal custody of his U.S. citizen mother. Accordingly, the AAO finds that he has not acquired 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 not met his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.