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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[REDACTED]

FILE:

Office: NEW YORK, NY

Date:

JUN 03 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.

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 sustained.

The record reflects that the applicant was born on December 30, 1990 in China. The applicant's parents, as reflected in his birth certificate, are [REDACTED] and [REDACTED]. The applicant's mother became a U.S. citizen on September 29, 2006, when the applicant was 15 years old. The applicant was admitted to the United States as a lawful permanent resident on July 21, 2004, when he was 13 years old. 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, in relevant part, that the applicant had failed to establish that he was residing in the physical 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 indicates that the applicant is "living with [her]" and that she has "full custody" of him. *See* Statement 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 in 2004, and that the applicant's mother naturalized in 2006. The applicant is under 18 years of age.

The record contains an affidavit executed by the applicant's mother stating that the family resides at [REDACTED] but that they use a different mailing address [REDACTED]. The evidence in the record includes utility bills, bank statements, school report cards, identity and insurance cards and documentation, and income tax returns. The AAO notes that the utility bills are addressed to [REDACTED] at [REDACTED] whereas the other documents primarily list the [REDACTED] address. The AAO notes that the school records submitted on appeal, relating to the applicant and his sister, list the [REDACTED] address. The record also includes an affidavit executed by [REDACTED] the applicant's family's landlord, stating that the family resides at the [REDACTED] address.

The AAO finds that the applicant has established, by a preponderance of the evidence, that he resides in his mother's custody as required by subsection (a)(3) of section 320 of the Act, 8 U.S.C. § 1431(a)(3). Accordingly, the AAO concludes that he has demonstrated that he acquired citizenship pursuant to the section 320 of the Act, 8 U.S.C. § 1431.

Pursuant to 8 C.F.R. § 341.2(c), 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 has met his burden and the appeal will be sustained.

ORDER: The appeal is sustained.