



U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE: [Redacted] Office: NEW YORK, NY Date: **MAR 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.

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 January 15, 1989 in Jamaica. The applicant's parents are [REDACTED] and [REDACTED]. The applicant's parents were married in 1992, and divorced in 2002. The applicant's father became a U.S. citizen upon his naturalization on December 7, 2004, when the applicant was 15 years old. The applicant's mother became a U.S. citizen upon her naturalization on April 30, 1997, when the applicant was 8 years old. The applicant was admitted to the United States as a lawful permanent resident on June 19, 1991, when he was 2 years old. The applicant presently seeks a certificate of citizenship claiming that he acquired U.S. citizenship from his mother pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The district director found that the applicant was not in his mother's physical custody between February 27, 2001 and his 18<sup>th</sup> birthday. The application was denied accordingly.

On appeal, the applicant's mother states that the applicant resided with her in 2001, in her physical and legal custody. The applicant's mother submits additional documentary evidence in support of her claim.

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 parents naturalized prior to his 18<sup>th</sup> birthday. The record contains a copy of the applicant's parents' divorce decree, granting his mother legal custody over the applicant. The record further contains evidence of the applicant's and his mother's residential address, including school records, family court records, and tax records.

The district director notes that the regulations provide for a presumption of legal custody where an applicant is residing "with both natural parents (who are married to each other, living in marital union, and not separated)." *See* 8 C.F.R. 320.1. The AAO finds that the applicant was in his mother's legal custody pursuant to this presumption prior to the divorce, and pursuant to court order thereafter. With respect to physical custody, the record contains ample evidence to establish that the applicant and his mother were residing at [REDACTED]

together during the relevant time period (on or after the effective date of the CCA). Notably, the court records relating to the applicant's parents' divorce and custody proceedings indicate that the applicant had been and was residing with his mother while the proceedings were pending in 2002. The applicant's 2000/2001 school records indicate that he was residing with his mother at [REDACTED]. At his interview, the applicant indicated that he resided with both parents until their separation, then with his mother, and then with his father starting in 2005. The AAO finds that the applicant acquired U.S. citizenship on February 27, 2001, because on that date he was a lawful permanent resident, under 18, residing in the physical and legal custody of a U.S. citizen parent.

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 pursuant to section 320 of the INA, 8 U.S.C. § 1431. The appeal will therefore be sustained.

**ORDER:** The appeal is sustained.