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



**U.S. Citizenship  
and Immigration  
Services**

**PUBLIC COPY**



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FILE:

Office: NEW YORK, NY

Date: MAR 24 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.

*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 June 3, 1994 in Yemen. The applicant's birth certificate reflects that her parents are [REDACTED] and [REDACTED]. The applicant's father became a U.S. citizen upon his naturalization on June 14, 2001, when the applicant was 7 years old. The applicant was admitted to the United States as a lawful permanent resident on May 21, 2006, when she was 11 years old. The applicant seeks a certificate of citizenship pursuant to section 320 of the Immigration and Naturalization Act (the Act), 8 U.S.C. § 1431, claiming that she acquired U.S. citizenship upon her father's naturalization.

The district director denied the applicant's citizenship claim finding that she was not residing in the physical custody of a U.S. citizen parent. The district director based his finding specifically on a Verification of Pupil Registration from the New York Public Schools that indicated that the applicant resided on [REDACTED], as opposed to [REDACTED] (where her father resides). The application was denied accordingly.

On appeal, the applicant's father maintains that the applicant resides with him. In support of his claim, the applicant's father submits a new Verification of Pupil Registration from the New York Public Schools listing his address. The applicant also submits a letter from their landlord verifying that the applicant resides with her father.

Section 320 of the Act, 8 U.S.C. § 1431, was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA benefits all persons who have not yet reached their eighteenth birthdays as of February 27, 2001. Because the applicant was under the age of 18 on February 27, 2001, she 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.
- (b) Subsection (a) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

The AAO notes that the record contains a copy of the applicant's U.S. passport. In accordance with *Matter of Villanueva*, 19 I&N Dec. 101 (BIA 1984), a valid U.S. passport constitutes conclusive proof of a person's U.S. citizenship and may not be collaterally attacked.

The AAO finds that the applicant has established, by a preponderance of the evidence, that she resides with her father at his [REDACTED] address. Specifically, the applicant has overcome the district director's concern regarding her address by providing an updated Verification of Pupil Registration from the New York Public Schools and a letter from her landlord.

The AAO further finds that the applicant is in her father's legal custody. 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. Although the record is unclear with respect to the applicant's mother's residence, there is no evidence suggesting that the applicant's parents are divorced or separated, or that she is not in her father's legal custody.

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 applicant has met her burden and the appeal will be sustained.

**ORDER:** The appeal is sustained.