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U.S. Citizenship
and Immigration
Services

F-2

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FILE:



Office: MIAMI, FLORIDA (TAMPA) 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.

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, Miami, Florida (Tampa). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on January 12, 1994 in Paraguay. The applicant was adopted on August 12, 1996 by [REDACTED] and [REDACTED]. The applicant's adoptive parents are native-born U.S. citizens. The applicant was admitted to the United States as a lawful permanent resident on August 24, 1996. The applicant seeks a certificate of citizenship pursuant to section 320 of the Immigration and Naturalization Act (the Act), 8 U.S.C. § 1431.

The district director denied the applicant's citizenship claim finding that he was not residing in the legal and physical custody of a U.S. citizen parent. The application was denied accordingly.

On appeal, the applicant maintains that he resides with his adoptive parents. *See Applicant's Sister's Statement on Appeal.* The applicant's sister explains that he resides with her during the school year and that her parents, the applicant's adoptive parents, have homes in both Michigan and Florida. *Id.* She further claims that her mother, the applicant's adoptive mother, lives in Florida for much of the school year. *Id.*

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, 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.
- (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 record reflects that the applicant is the adoptive son of native-born U.S. citizens. He was adopted and subsequently admitted to the United States as a lawful permanent resident at the age of 2. The evidence in the record, consisting of school and tax records, is insufficient to establish that the applicant is in his parents' legal and physical custody. In fact, the evidence in the record suggests that the applicant is residing in his sister's legal and physical custody.

The AAO notes that the school records submitted identify the applicant's sister as his legal guardian. The applicant's parents' tax returns do not list any dependents, whereas the applicant is listed as a dependent in his

sister's tax return. The record does not include any evidence in support of the applicant's claim that his mother resides with him for part of the year. The address listed in the applicant's parents' tax return is their Michigan address.

A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 885 (1988). Even courts may not use their equitable powers to grant citizenship, and any doubts concerning citizenship are to be resolved in favor of the United States. *Id.* at 883-84; *see also United States v. Manzi*, 276 U.S. 463, 467 (1928) (stating that "citizenship is a high privilege, and when doubts exist concerning a grant of it ... they should be resolved in favor of the United States and against the claimant"). Moreover, "it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect." *Berenyi v. District Director, INS*, 385 U.S. 630, 637 (1967).

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 failed to meet his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.