



U.S. Citizenship
and Immigration
Services

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FILE:

Office: NEW YORK, NY

Date: **MAY 06 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:

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 Form N-600, Application for Certificate of Citizenship (N-600 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 and the N-600 application will be approved.

The applicant was born in Egypt on April 16, 1983. He turned eighteen on April 16, 2001. The applicant's mother was born in Egypt and she is not a U.S. citizen. The applicant's father was born in Egypt, and he became a naturalized U.S. citizen on February 19, 1993, when the applicant was nine years old. The record reflects that the applicant's parents married on April 9, 1978, and that they remain married. The applicant was admitted into the United States as a lawful permanent resident on September 1, 2000, when he was seventeen years old. He presently 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 derived U.S. citizenship through his father.

The district director found that the applicant had failed to provide evidence establishing he resided in the physical custody of his U.S. citizen father subsequent to the enactment of section 320 of the Act, and prior to his eighteenth birthday, as required by section 320(a)(2) and (3) of the Act. The N-600 application was denied accordingly.

Through counsel, the applicant indicates on appeal that school transcripts, as well as Egyptian and U.S. passports establish that the applicant lived in the U.S. in his father's physical custody between February 27, 2001, the date that section 320 of the Act went into effect, and April 16, 2001, when the applicant turned eighteen. The applicant asserts that he met section 320 of the Act requirements prior to his eighteenth birthday, and he concludes that he qualifies for automatic citizenship under the Act.

The AAO notes that as of February 27, 2001, the Child Citizenship Act of 2000 (CCA) amended section 320 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. §1431. The provisions of the CCA are not retroactive and the amended provisions of section 320 apply only to persons who were not yet eighteen-years-old as of February 27, 2001. Because the applicant was under the age of eighteen on February 27, 2001, he is eligible for consideration under section 320 of the amended Act. *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001.)

Section 320 of the Act, as amended, allows a child born outside of the U.S. to automatically become a citizen of the United States upon fulfillment of the following conditions:

- (a) (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.

Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33) provides that, "[t]he term "residence" means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent."

The record contains the following evidence relating to the applicant's citizenship claim under section 320 of the Act:

A birth certificate reflecting that the applicant was born in Egypt on April 16, 1983, to [REDACTED] (father) and [REDACTED] (mother.)

A U.S. Permanent Resident Card reflecting that the applicant was admitted to the United States as a lawful permanent resident on September 1, 2000.

A Certificate of Naturalization reflecting that the applicant's father became a naturalized U.S. citizen on February 19, 1993.

An affidavit signed by the applicant on October 19, 2006, stating in relevant part that he entered the United States on September 1, 2000, and that he remained in the United States until July 7, 2001. The applicant indicates that he attended a reading class at Hunter College in New York in Spring 2001, and he states that he earned a "C" grade in the class. The applicant states further that he has been issued a U.S. passport.

A copy of the applicant's Spring 2001 school transcript from Hunter College reflecting that he lived at [REDACTED] in New York, and reflecting that the applicant earned a "C" grade in his Reading 2 class, and that he earned "F" grades in three other classes and withdrew from one class.

An undated letter signed by [REDACTED], stating that he is a supervisor at [REDACTED] located at [REDACTED] in New York, and stating that the applicant lived with his father in apartment # [REDACTED] from September 2000 until July 2001.

A copy of the applicant's Egyptian passport reflecting, in pertinent part that the applicant was admitted into the United States as a U.S. lawful permanent resident on September 1, 2000, and reflecting that he was admitted into Egypt on July 8, 2001.

A copy of the applicant's U.S. passport issued in New York on February 23, 2006.

The regulation provides at 8 C.F.R. § 341.2(c), that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. Under the preponderance of evidence standard, it is generally sufficient that the proof establish that something is probably true. *Matter of E-M*, 20 I&N Dec. 77 (Comm. 1989.)

Upon review of the evidence contained in the record, the AAO finds that the applicant has established by a preponderance of the evidence, that he satisfied the section 320 of the Act requirements for automatic vesting of U.S. citizenship prior to his eighteenth birthday. The applicant's father's naturalization certificate establishes that he became a naturalized U.S. citizen prior to the applicant's eighteenth birthday, and the U.S. lawful permanent resident documentation establishes that the applicant became a lawful permanent resident

prior to his eighteenth birthday. In addition, the AAO finds that the school and passport evidence contained in the record establish by a preponderance of the evidence that the applicant resided in New York in the physical custody of his father between February 27, 2001 and April 16, 2001, when he turned eighteen. Accordingly, the applicant has established that he met all of the requirements for automatic vesting of his citizenship under section 320 of the Act. The applicant has thus met his burden of proof in the present matter, and the appeal will be sustained and the N-600 application approved.

ORDER: The appeal is sustained. The application is approved.