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U.S. Citizenship
and Immigration
Services

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MAY 15 2008

FILE:



OFFICE: NEW YORK, NY DATE:

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, Chief
Administrative Appeals Office

DISCUSSION: The Form N-600, Application for Certificate of Citizenship (Form N-600) 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 dismissed and the Form N-600 will be denied.

The applicant was born in Ecuador on March 10, 1994, and she is presently fourteen years old. The applicant's father was born in Ecuador, and he became a naturalized U.S. citizen on April 19, 2006, when the applicant was twelve years old. The applicant's mother is not a U.S. citizen. The applicant's parents divorced on July 5, 1996, when the applicant was two years old. The applicant was admitted into the United States as a lawful permanent resident on April 26, 2004, when he was ten years old. She 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 she derived U.S. citizenship through his father.

The district director determined that the applicant failed to establish that her U.S. citizen father has legal custody over her, as required by section 320(a)(3) of the Act. The Form N-600 was denied accordingly.

On appeal, the applicant asserts, through her father, that she meets the requirements of section 320 of the Act because she lives with her father in the United States, and her mother transferred custody to her father.

Section 320 of the Act 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.

Legal custody vests "[b]y virtue of either a natural right or a court decree." *Matter of Harris*, 15 I&N Dec. 39 (BIA 1970.) In the absence of a judicial determination or grant of custody in a case of a legal separation of the naturalized parent, the parent having actual, uncontested custody of the child is to be regarded as having "legal custody." *Matter of M*, 3 I&N Dec. 850, 856 (BIA 1950).

In the present matter, the record contains a court order reflecting that the applicant's parents divorced in Ecuador on July 5, 1996. The court order states that, pending further custody proceedings, the court grants care and protection over the applicant to her mother. The record contains no evidence to indicate that further custody proceedings were initiated, or to indicate that an amended custody order was made. Instead, the record contains a sworn affidavit signed by the applicant's mother on September 4, 2006, stating that the applicant has resided with her father for several years, and stating that her mother renounces being in charge of the applicant, and gives her father plain authority to gain complete authority over her.

Upon review of the evidence, the AAO finds that the applicant has failed to establish by a preponderance of the evidence, that her U.S. citizen father has obtained legal custody over her. The applicant's parents' July 5, 1996, divorce decree states that care and protection of the applicant was awarded to her non-citizen mother. Moreover,

the AAO notes that the September 2004, sworn affidavit signed by the applicant's mother is a private document, and does not constitute a court order or legal amendment to the July 5, 1996, court order awarding care and protection over the applicant to her mother. The applicant therefore failed to establish that her U.S. citizen father has legal custody over her.

The regulation at 8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. The applicant has failed to meet her burden of proof in the present matter. The appeal will therefore be dismissed and the N-600 application will be denied.

ORDER: The appeal is dismissed. The application is denied.