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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

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PUBLIC COPY



FILE:



Office: NEW YORK, NY

Date:

MAY 21 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, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant as born on September 4, 1997 in Ecuador. The applicant's birth certificate reflects that her parents are [REDACTED] and [REDACTED]. The applicant's parents have never been married to each other. The applicant's father became a U.S. citizen upon his naturalization on September 25, 2001, when the applicant was four years old. The applicant was admitted to the United States as a lawful permanent resident on October 2, 2005, when she was eight years old. The applicant seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, claiming that she acquired U.S. citizenship from her father.

The district director denied the applicant's citizenship claim after finding that she was not residing in the United States in the physical custody of a U.S. citizen parent. The district director's finding was based on evidence in the record indicating that the applicant was attending school in Ecuador. The application was denied accordingly.

On appeal, the applicant's father submits documents dated January 2007 evidencing registration in the local public school, medical records evidencing immunizations given in January 2007, and a notarized statement dated January 2007 from the applicant's mother purporting to be a power of attorney in favor of the applicant's 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 is under the age of 18, 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.

The AAO notes at the outset that the applicant was born out of wedlock. Legal custody is presumed, in the case of a child born out of wedlock, only when the child has been legitimated and resides with the natural parent. See 8 C.F.R. § 320.1. In *Matter of Campuzano*, 18 I.&N. Dec. 390 (BIA 1983), the Board of Immigration Appeals noted that the Civil Code of Ecuador, which is based on the 1967 Constitution, makes no distinction between legitimate and illegitimate children and that a child is "legitimated" or "recognized" by the acknowledgment of either or both parents. As such, all children born in Ecuador after August 7, 1970 (the effective date of the Civil Code amendment) . . . who were acknowledged by one parent should be considered legitimate children.

The record in this case is unclear, at best, with respect to the question of whether the applicant's father has, or ever had, legal custody of the applicant. The notarized power of attorney in the record does not sufficiently establish that the applicant's father has legal custody over the applicant. It is also unclear whether the applicant is currently residing with her father, in his physical custody. The medical and school records submitted indicate an intention on the part of the applicant to register in the local public school, but no further documentation evidencing actual physical custody was submitted. The AAO notes that the applicant is 10 years old. Should the applicant begin to reside with her father, in his legal and physical custody, she may then automatically acquire U.S. citizenship under section 320 of the Act, 8 U.S.C. § 1431. In order to obtain a certificate of citizenship, the applicant will have to submit evidence establishing that she is residing in her father's legal and physical custody. Such evidence is not presently in the record.

The AAO notes "[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." *Fedorenko v United States*, 449 U.S. 490, 506 (1981). The U.S. Supreme Court has further stated "it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect. This Court has often stated that doubts 'should be resolved in favor of the United States and against the claimant.'" *Berenyi v. District Director*, 385 U.S. 630, 671 (1967). Pursuant to 8 C.F.R. § 341.2(c), 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 not met her burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.