

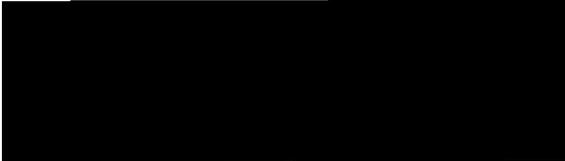
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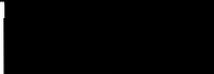
U.S. Citizenship
and Immigration
Services

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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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on November 26, 1990 in Guyana. She was adopted by [REDACTED] on March 2, 2000. [REDACTED] was admitted to the United States as a lawful permanent resident on August 4, 2001 and became a U.S. citizen upon her naturalization on September 15, 2006. The applicant was admitted to the United States as a lawful permanent resident December 11, 2006. The applicant seeks a certificate of U.S. citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The district director denied the applicant's claim finding that she had not been in her adoptive mother's custody for at least two years prior to the filing of her Petition for Alien Relative. The director thus found that the applicant did not satisfy the requirements of section 101(b)(1)(E) of the Act, 8 U.S.C. § 1101(b)(1)(E). The application was accordingly denied.

On appeal, the applicant's mother maintains that the applicant has been in her custody "for years." See note appended to Form I-290B, Notice of Appeal to the AAO.

Section 320 of the Act states in pertinent part:

(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).

Section 101(b)(1)(E) of the Act states, in pertinent part, that the term "child" means an unmarried person under twenty-one years of age who is-

- (i) [A] child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years: Provided, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act; or

Precedent legal decisions have held that the two-year residence requirement set forth in section 101(b)(1)(E) of the Act may be satisfied either before or after an adoption. See *Matter of Repuyan*, 19 I&N Dec. 119, 120

(BIA 1984). Legal custody, however, vests “by virtue of either a natural right or a court decree.” *See Matter of Harris*, 15 I&N Dec. 39 (BIA 1970).

The record in the present case contains an adoption decree establishing that the applicant was adopted on March 2, 2000, at the age of nine. The record indicates that the applicant’s adoptive mother obtained legal custody of her at that time. There is no evidence in the record suggesting that the applicant was in her adoptive mother’s legal custody prior to her adoption. The record reflects that the applicant’s adoptive mother was admitted to the United States on August 1, 2001. The applicant had been residing with her adoptive mother, in her legal custody, for only 17 months at that time. The applicant therefore did not meet the requirement, set forth in section 101(b)(1)(E)(i), of two years of residence in the adoptive parent’s legal custody. The applicant therefore does not qualify as a “child” under section 101(b)(1)(E)(i).

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. The applicant in the present case has not met her burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.