

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

E2

FILE:

Office: NEW YORK, NY

Date:

**MAY 23 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 sustained.

The record reflects that the applicant was born on March 30, 1984 in Ecuador. The applicant's birth certificate reflects that her parents are [REDACTED] and [REDACTED].<sup>1</sup> The applicant's parents were married in 1980 in Ecuador. The applicant's father became a U.S. citizen upon his naturalization on September 23, 1996, when the applicant was 12 years old. The applicant was admitted to the United States as a lawful permanent resident on October 2, 2000, when she was 16 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 the applicant had not resided in the United States in her father's custody. The director stated that the finding was based on the applicant's testimony at the interview. The application was denied accordingly.

On appeal, the applicant maintains that the director misunderstood her testimony and that she had resided with her father in the United States during the relevant period.

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, 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 finds that the applicant has established, by a preponderance of the evidence, that she was residing in the United States in the physical custody of her father. The record indicates that the applicant was admitted as a lawful permanent resident in October 2000. Her 18<sup>th</sup> birthday was in March 2002. School records indicate that she was enrolled at Bay Shore Senior High School until May 2001, and her father is listed as her parent or guardian. The address listed in the school records corresponds to her father's address, as indicated in the 2001 tax transcript. A Sworn Affidavit, signed by the applicant and her father on October 10, 2007,

---

<sup>1</sup> The AAO notes that the applicant's birth was registered in 1984, as indicated in the birth certificate issued in 2000 submitted in connection with the applicant's immigrant visa processing. The AAO notes that the record also contains a birth certificate issued in 2007. The AAO finds no discrepancies in the information contained in the certificates.

indicates that the applicant entered the United States in October 2000 and “attempted to attend school in the United States but she had problems . . . so she went back to Ecuador to complete her High School . . . [and] returned to the United States [in] 2004.” *See* Sworn Affidavit, dated October 10, 2007. The AAO finds that that applicant resided in her father’s custody upon her admission to the United States in 2000. She automatically acquired U.S. citizenship pursuant to section 320 of the Act, 8 U.S.C. § 1431 before her return to Ecuador to complete high school in 2001.

The AAO notes that the record contains a copy of the applicant’s U.S. passport. In accordance with *Matter of Villanueva*, 19 I&N Dec. 101 (BIA 1984), a valid U.S. passport constitutes conclusive proof of a person’s U.S. citizenship and may not be collaterally attacked.

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 met her burden and the appeal will be sustained.

**ORDER:** The appeal is sustained.