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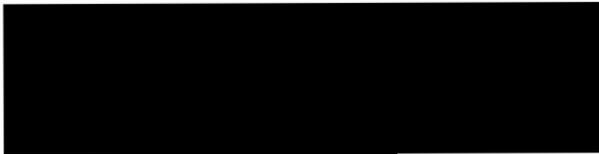
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEW YORK, NY

Date:

SEP 09 2008

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship under Section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401

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.

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 was born on October 9, 2001 in Lebanon. The applicant's parents are [REDACTED]. The applicant's parents were married in Lebanon in 1984. The applicant's father became a U.S. citizen upon his naturalization on April 17, 2007, when the applicant was five years old. The applicant was admitted to the United States as a lawful permanent resident on August 7, 2007, when she was five years old. The applicant presently seeks a certificate of citizenship claiming that she acquired U.S. citizenship from her father pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The district director denied the citizenship claim upon finding that the applicant was not in her father's physical custody. The application was denied accordingly.

On appeal, the applicant, through counsel, states that her father maintained physical custody while she attended school in Lebanon. The applicant thus claims she acquired U.S. citizenship upon her admission to the United States as a lawful permanent resident. Further, the applicant claims her application must be granted because she holds a valid U.S. passport.

It is well-established that a valid U.S. passport constitutes conclusive proof of a person's U.S. citizenship and may not be collaterally attacked. *Matter of Villanueva*, 19 I&N Dec. 101 (BIA 1984). The AAO notes that the applicant has not submitted a copy of her U.S. passport. Moreover, the regulations require an applicant for a certificate of citizenship to submit "documentary and other evidence essential to establish the claimed citizenship." 8 C.F.R. § 341.1. Such evidence is required because, among other things, it is necessary for USCIS to determine the date when citizenship was acquired.

Section 320 of the Act, 8 U.S.C. § 1431, was amended by the Child Citizenship Act of 2000 (the CCA). The amendments took effect on February 27, 2001 and apply only to persons who were not yet 18 years old as of February 27, 2001. Because the applicant was under the age of 18 on February 27, 2001, she is eligible for the benefits of section 320 of the amended Act. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

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.

(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).

The applicant in this case has established that she was admitted as a lawful permanent resident of the United States and that her father naturalized prior to her 18th birthday. The AAO finds however that the applicant is not in the legal custody of her father. Pursuant to the regulations, at 8 C.F.R. § 320.1, legal custody is presumed when a biological child is residing with both natural parents (who are married to each other, living in marital union, and not separated). The AAO finds that legal custody cannot be presumed in this case because the applicant is residing in Lebanon with her mother, while her father resides in Brooklyn. Although the applicant was admitted to the United States as a lawful permanent resident, she remained only for a few weeks before returning to Lebanon. She has since returned only for her interview. There is no evidence in the record suggesting that the applicant is currently in her father's legal custody. Having found that the applicant is not in her father's legal custody, the AAO need not address the issue of the applicant's physical custody while attending school in Lebanon.

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. 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 AAO concludes that the applicant has not met her burden to establish, by a preponderance of the evidence, that she acquired U.S. citizenship. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.