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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED] Office: NEW YORK

Date: APR 22 2009

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act, 8 U.S.C. §1431.

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.

John F. Grissom
Acting 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 matter will be remanded to the director for further action consistent with this decision.

The record reflects that the applicant was born on February 8, 1989 in the Dominican Republic. The record reflects that his parents are [REDACTED] (formerly [REDACTED]) and [REDACTED]. The applicant's parents were divorced in 1991. The applicant's father became a U.S. citizen on May 12, 2006, when the applicant was 17 years old. The record indicates that the applicant was admitted to the United States as a lawful permanent resident on June 6, 2006, when he was 17 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 he acquired U.S. citizenship from his father.

The district director denied the applicant's citizenship claim finding that he was not residing in the United States. The district director based her finding on the applicant's testimony that he has been living with his father in the Dominican Republic while attending school (since 2005). The application was denied accordingly.

On appeal, the applicant, through counsel, maintains that he is a permanent resident of the United States who has been temporarily attending school in the Dominican Republic. The applicant submits a copy of his parents' divorce decree (granting custody to his father), New York driver's licenses issued in 2006 and 2007, and school records evidencing his attendance in New York schools from 2001-2005.

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, he 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.

- (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 was under 18 when his father naturalized and when he was admitted to the United States as a lawful permanent resident. The AAO finds further that the applicant has established that he is in his father's legal and physical custody. Nevertheless, the question remains whether the applicant has established that he was "residing in the United States" in his father's custody "pursuant to a lawful admission for permanent residence."

The AAO notes that the record indicates that the applicant resided in New York, and attended school, while residing with his father and step-mother from 2001 to 2005. As noted above, USCIS records indicate that the applicant obtained lawful permanent residence in 2006. Nevertheless, the applicant's file contains a copy of a stamp in his passport evidencing his admission as a lawful permanent resident on February 4, 2004.¹ The AAO further notes that the applicant was issued a Re-entry Permit (Form I-327) on September 16, 2005. The matter must therefore be remanded to the director for a determination regarding the applicant's actual date of admission to lawful permanent residence.

The AAO notes that if the applicant was admitted to the United States as a lawful permanent resident in February 2004, then his application should be approved and a certificate of citizenship issued. As previously noted, the applicant has established that he resided with his father in the United States between 2001 and 2005. If the director determines that the applicant's passport was stamped in error in 2004, she shall render a new decision accordingly and that decision shall be certified to the AAO.

ORDER: The matter is remanded to the director for further action consistent with this decision.

¹ The AAO further notes that the applicant was scheduled for an adjustment of status interview on February 4, 2004. The Form I-130, Petition for Alien Relative, filed on the applicant's behalf was approved on February 4, 2004. The applicant's administrative file includes an undated adjustment of status approval worksheet.