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U.S. Citizenship and Immigration Services  
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U.S. Citizenship  
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[REDACTED]

FILE: [REDACTED] Office: NEW YORK, NY

Date: **JUL 17 2009**

IN RE: [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:

[REDACTED]

**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*

John F. Grissom, Acting Chief  
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 sustained.

The record reflects that the applicant was born on November 8, 1993 in Pakistan. The applicant's parents are [REDACTED] and [REDACTED]. The applicant's parents were married in 1990 and divorced in 1995. The applicant's father has been a U.S. citizen since his naturalization in 2005. The applicant was admitted to the United States as a lawful permanent resident on April 16, 2008, when he was 14 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, based on the claim that he acquired U.S. citizenship through his father.

The district director concluded, in relevant part, that the applicant did not acquire U.S. citizenship under section 320 of the Act because he was not legitimated by his father. Specifically, the director noted that the declaration submitted to evidence the applicant's parents' divorce indicated that their marriage was "null and void" and, as such, under the Muslim Family Laws Ordinance, "any resulting children are considered illegitimate." The application was therefore denied.

On appeal, the applicant, through counsel, maintains that he acquired U.S. citizenship despite his parents' marriage "annulment." *See* Memorandum of Law submitted on Appeal.

Section 320 of the Act was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA benefits all persons who had not yet reached their 18th birthdays as of February 27, 2001. Because the applicant was under 18 years old 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.

Section 101(c) of the Act, 8 U.S.C. § 1101(c) states, in pertinent part, that for Title III naturalization and citizenship purposes:

The term “child” means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child’s residence or domicile, or under the law of the father’s residence or domicile, whether in the United States or elsewhere . . . if such legitimation . . . takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating . . . parent or parents at the time of such legitimation

The record reflects that the applicant was admitted to the United States as a lawful permanent resident in April 2008, and that the applicant’s father naturalized in 2005. The applicant’s parents were married in 1990 (prior to the applicant’s birth). The record, however, includes a “Declaration” executed by the applicant’s mother purporting to dissolve her marriage to the applicant’s father and including the statement that she declares her marriage to be “non-existent and null and void . . . today the 19<sup>th</sup> January, 1995.” The AAO notes that the “Declaration” includes a clause stating that “from the 19<sup>th</sup> day of January, 1995” the marriage “has come to an end.”

In view of the language in the divorce document, i.e. the “Declaration,” the AAO must find that the applicant’s parents’ marriage was not “void” or “unlawful in and of itself” as the director found. The Muslim Family Law Ordinance of 1961 cited by the director distinguishes valid from void or irregular marriages. The applicant’s parents’ marriage was neither void nor irregular under the Muslim Family Law Ordinance of 1961. Examples of irregular marriages are marriages contracted without the required witnesses, void marriages are those prohibited because they are adulterous or incestuous for instance. The Dissolution of Muslim Marriages Act of 1939 provides for divorce in a variety of circumstances. The applicant’s mother’s allegations in her “Declaration” are consistent with the grounds specified in the Dissolution of Muslim Marriages Act. It appears, therefore that the applicant’s parents were married in 1990 and subsequently divorced in 1995. It further appears that the applicant has been in his father’s legal<sup>1</sup> and physical custody since his admission to the United States in 2008. Thus, the AAO finds that he acquired U.S. citizenship pursuant to section 320 of the Act, 8 U.S.C. § 1431.<sup>2</sup>

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

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<sup>1</sup> The AAO notes that the “Declaration” evidencing the applicant’s parents’ divorce does not specifically address the issue of legal custody. The record, however, contains an Affidavit executed by the applicant’s mother in 2002 stating that she is transferring custody to the applicant’s father. The applicant has been in his father’s actual, uncontested custody.

<sup>2</sup>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.

“more likely than not.” *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). The applicant has met his burden and the appeal will be sustained.

**ORDER:** The appeal is sustained.