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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:

Office: NEW YORK, NY

Date:

JUN 01 2009

IN RE:

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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, New York, New York. The matter came before the Administrative Appeals Office (AAO) on appeal. The appeal was dismissed. Upon *sua sponte* reopening, the appeal will be sustained and the application approved.

The record reflects that the applicant was born on April 19, 1990 in Lebanon. The applicant's parents are [REDACTED] and [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 16 years old. The applicant was admitted to the United States as a lawful permanent resident on August 7, 2007, when she was 17 years old. The applicant 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, claimed that she acquired U.S. citizenship upon her admission to the United States as a lawful permanent resident. The AAO dismissed the applicant's appeal, finding that she had failed to establish that she was in her father's legal custody. On April 15, 2009, the AAO reopened the matter *sua sponte* and allowed the applicant an opportunity to submit additional evidence. The AAO received the applicant's response to the request on May 13, 2009.

The AAO notes that the applicant has obtained a 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 applicant's file now contains 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 has previously determined that the applicant is in her father's legal custody. The question remained whether the applicant is in her father's physical custody.

The AAO notes that the applicant's 18th birthday was on April 18, 2008. The record suggests that she was admitted to the United States as a lawful permanent resident, but that she departed shortly thereafter with her mother back to Lebanon. She has since returned to the United States. The AAO notes, however, that the evidence of U.S. residence submitted in response to the AAO's reopening relates to periods after the applicant's 18th birthday and is therefore irrelevant. The applicant has not provided the requested evidence of her residence since October 2007, evidence of her attendance at a boarding school in Lebanon, or evidence of her mother's residence while the applicant was in boarding school. The AAO notes, however, that the applicant was claimed as a dependant in her parents' federal income tax returns in 2007 and 2008. The AAO also notes that the record includes evidence suggesting that the applicant resided with her parents in New York for about one month after her admission to the United States as a lawful permanent resident. The AAO therefore finds that the applicant acquired U.S. citizenship upon her admission to the United States because she was then residing in the United States in the legal and physical custody of her U.S. citizen parent as required by section 320 of the Act, 8 U.S.C. § 1431.

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 applicant has met her burden. The appeal will therefore be sustained.

ORDER: The appeal is sustained and the application approved.