



U.S. Citizenship
and Immigration
Services

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FILE:

Office: YAKIMA

Date:

JUN 23 2009

IN RE:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Yakima, Washington, 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 December 22, 1983 in Belarus. The applicant's parents, as indicated in his birth certificate, are [REDACTED] and [REDACTED]. The applicant's parents were married in 1981 and divorced in 1995. The applicant was admitted to the United States as a refugee, and subsequently adjusted his status to lawful permanent resident prior to his 18th birthday. The applicant's father became a U.S. citizen on May 26, 2000, when the applicant 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, based on the claim that he acquired U.S. citizenship through his father.

The field office director concluded, in relevant part, that the applicant had failed to establish that he was in the legal custody of his U.S. citizen father, as required by section 320 of the Act. The application was denied accordingly.¹

On appeal, the applicant contends that he has been in his father's legal and physical custody since 1999. *See Applicant's Appeal Brief at 3.* The applicant claims that his parents' 1995 divorce decree is silent with respect to his custody, and that he derived U.S. citizenship upon his father's naturalization because he was in his father's actual, uncontested custody.

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.

¹ The AAO notes that the applicant's filed contains an October 31, 2008 Decision by the Field Office Director purporting to deny the applicant's appeal. The October 31, 2008 decision will be withdrawn. The Field Office Director is without jurisdiction to consider the applicant's appeal except as specifically provided in the regulations. *See* 8 C.F.R. § 103.3(a)(2)(iv) (providing that if the reviewing official will not be taking favorable action, the appeal shall promptly be forwarded to the AAO).

The record reflects that the applicant was admitted to the United States as a lawful permanent resident prior to his 18th birthday. Likewise, the applicant's father naturalized prior to the applicant's 18th birthday. It is also undisputed that the applicant was in his father's physical custody during the relevant period prior to the applicant's 18th birthday. The question remains whether the applicant was in his father's legal custody.

Legal custody vests "by virtue of either a natural right or a court decree". *See Matter of Harris*, 15 I&N Dec. 39 (BIA 1970). The regulations provide that "[i]n the case of a child of divorced or legally separated parents, the Service will find a U.S. citizen parent to have legal custody of a child, for the purpose of the CCA, where there has been an award of primary care, control, and maintenance of a minor child to a parent by a court of law or other appropriate government entity pursuant to the laws of the state or country of residence"). In the absence of a judicial determination or grant of custody in a case of a legal separation of the naturalized parent, the parent having actual, uncontested custody of the child is to be regarded as having "legal custody." *See Matter of M*, 3 I&N Dec. 850, 856 (BIA 1950).

The record indicates that the applicant's family was first admitted to the United States in 1994. The applicant and his mother returned to Russia, and subsequently moved back to the United States. In 1995, by order of the Los Angeles Superior Court, the applicant's parents were divorced. The divorce documents indicate that the applicant and his mother were residing in Russia at the time. The Los Angeles Superior Court therefore did not enter a child custody order (finding itself without jurisdiction to do so).

The AAO finds that the applicant was in his father's actual, uncontested custody. Therefore he is deemed to have been in his father's legal custody, and has established eligibility for a certificate of citizenship as claimed under 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. The applicant in the present case has met his burden and the appeal will be sustained.

ORDER: The appeal is sustained.