

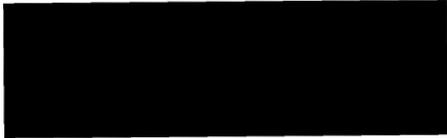


U.S. Citizenship
and Immigration
Services

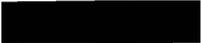
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FILE:



Office: ORLANDO, FL

Date:

MAR 05 2009

IN RE:

Applicant:



APPLICATION:

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 Acting Field Office Director, Orlando, Florida, 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 September 9, 1989 in Jamaica. The applicant's father, [REDACTED] became a U.S. citizen upon his naturalization on February 14, 2006, when the applicant was 16 years old. The applicant's mother, [REDACTED] is not a U.S. citizen. The applicant's parents were divorced on November 16, 1993. The applicant was admitted to the United States as a lawful permanent resident on May 1, 1998, when she was 10 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 she acquired U.S. citizenship through his father.

The acting field office director concluded, in relevant part, that the applicant had failed to establish that she was in her U.S. citizen parent's legal and physical custody as required by section 320 of the Act. The application was denied accordingly.

On appeal, the applicant contends that her father has had custody over her since her entry into the United States. The applicant submits, in relevant part, her birth certificate, her father's birth certificate, her father's marriage and divorce certificates, and her immunization records.

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

The record reflects that the applicant was admitted to the United States as a lawful permanent resident in 1998, and that her father became a U.S. citizen in 2006. The applicant's 18th birthday was on [REDACTED]. The question remains whether the applicant was residing in the United States in the legal and physical custody of her U.S. citizen parent.

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 AAO notes that according to the regulations, at 8 C.F.R. § 320.1,

legal custody is presumed “[i]n the case of a child of divorced or legally separated parents . . . 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 AAO notes that the applicant’s parents’ divorce judgment, entered in 1993, indicates that there were no minor children born of the marriage. *See* 1993 Divorce Judgment. The divorce judgment further states that the applicant’s parents were married in January 1993. *Id.* The record does not contain the applicant’s parents’ marriage certificate. Nevertheless, the AAO notes that, under 8 C.F.R. § 320.1, legal custody is also presumed in “the case of a biological child born out of wedlock who has been legitimated and currently resides with the natural parent.” The record sufficiently establishes that the applicant is her father’s biological daughter, that she was legitimated through her parents’ marriage, and that she resided with her father. Specifically, the AAO notes the DNA evidence in the record and the applicant’s immigrant visa documentation and immunization records.

The AAO therefore finds that the applicant was residing in the United States, as a lawful permanent resident, in her U.S. citizen father’s legal and physical custody. As such, she automatically acquired U.S. citizenship pursuant to 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 her burden and the appeal will be sustained.

ORDER: The appeal is sustained.