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



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: ANCHORAGE, AK

Date: **MAR 19 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.

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, Anchorage, Alaska, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on June 24, 1986 in Mexico. The applicant's parents, as reflected in his birth certificate, are [REDACTED] and [REDACTED]. The applicant's parents were never married to each other.<sup>1</sup> The applicant was admitted to the United States as a lawful permanent resident on June 13, 2001, when he was 15 years old. The applicant's father became a U.S. citizen on June 9, 2000, when the applicant 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 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.

On appeal, the applicant contends that he has been in his father's legal and physical custody since he arrived in the United States in 1998. In support of his claim, the applicant submitted school records, a statement from his mother (who resides in Mexico), and a notarized statement signed in 2008 wherein the applicant's mother grants "provisional custody" to his father.

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:

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<sup>1</sup> The applicant's father married [REDACTED] in 1998. [REDACTED], who was born in 1980, is not the applicant's mother.

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 2001, and that his father became a U.S. citizen in 2000. The question remains whether the applicant was residing in the United States in the legal and physical custody of his 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 the applicant was born out of wedlock. Under 8 C.F.R. § 320.1, legal custody is presumed in “the case of a biological child born out of wedlock who has been legitimated and currently resides with the natural parent.” Pursuant to article 130 of the Mexican Constitution, a child born out of wedlock in Mexico becomes legitimated only upon the civil marriage of his or her parents. *See Matter of M-D-*, 3 I&N Dec. 485 (BIA 1949). *See also, Matter of Hernandez*, 14 I&N Dec. 608 (BIA 1974) and *Matter of Rodriguez-Cruz*, 18 I&N Dec. 72 (BIA 1981). The applicant’s parents were never married to each other. The AAO thus finds that the applicant was not legitimated by his father pursuant to the laws in Mexico.

Under the laws of the State of Alaska, a father’s written acknowledgment of paternity legitimates the child. *See Alaska Statutes* § 25.20.050(a)(2). The AAO notes the evidence in the record establishing that the applicant has been residing in his father’s physical custody. *See, e.g.* Applicant’s School Records. The AAO further notes the documents in the record indicating that the applicant’s mother transferred custody to his father. The record, however, does not contain a written acknowledgment of paternity by the applicant’s father that would establish his legitimation under Alaska law.

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. Specifically, the applicant has not established that he was legitimated as required by section 101(c) of the Act in order to automatically acquire U.S. citizenship through his father. The applicant in the present case has not met his burden and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.