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

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: PHILADELPHIA, PA Date: MAY 0 7 2009

IN RE: Applicant: [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.

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).

Ellen C. Johnson

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The record reflects that the applicant was born on April 12, 1985 in Guinea. The applicant's parents, as reflected in his birth certificate, are and . The applicant's parents were never married to each other. The applicant's father was married to on August, 5, 1997. The applicant was admitted to the United States as a lawful permanent resident on May 23, 1999, when he was 14 years old. The applicant's father became a U.S. citizen on November 20, 1996, when the applicant was 11 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.[1]

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

On appeal, the applicant, through counsel, states that the director erred because he was in his father's custody prior to February 27, 2001 and because his father and uncle shared custody of him. *See* Form I-290B, Notice of Appeal to the AAO. The applicant indicates in his Notice of Appeal that he will be submitting additional evidence to the AAO within 30 days of filing, on or before March 13, 2009. *Id.* On March 18, 2009, applicant's counsel submitted a letter to the field office requesting an extension of time, until April 11, 2009, in which to submit any additional evidence.

To date, no additional brief or evidence has been received by the AAO. The AAO notes that the Form I-290B, Notice of Appeal, specifically indicates that any additional brief evidence must be submitted directly to the AAO and not to the field office. The regulations provide, in relevant part, that "a party may make a written request to the AAU for additional time to submit a brief. The AAU may, for good cause shown, allow the affected party additional time to submit one." *See* 8 C.F.R. § 103.3(a)(2)(vii). The applicant's request was not made to the AAU, did not proffer "good cause" upon which to grant an extension, and, in any event, no additional evidence was filed within the requested time.

8 C.F.R. § 103.3(a)(1)states in pertinent part that:

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[1] 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.

> (v) Summary dismissal. An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

The field office director's finding that the applicant was in his uncle's custody during the relevant period of time is supported by the evidence in the record. Section 320 of the Act, as amended, requires that the applicant establish that he was residing in the United States in his U.S. citizen parent's legal and physical custody.[2] Section 320 of the Act became effective on February 27, 2001. The applicant's custody prior to the effective date of section 320 of the Act is not at issue. The record indicates that the applicant resided with his uncle since 1999. The fact that he maintained contact with his father, or that he was a beneficiary of his father's health insurance, does not in itself establish that he was in his father's legal or physical custody. The applicant's 18th birthday was on April 12, 2003. The applicant has not provided any additional evidence or argument to overcome the finding that the applicant was not in his father's legal and physical custody between February 21, 2001 and his 18th birthday.

The AAO finds that the applicant's appeal fails to identify any erroneous conclusion of law or statement of fact in the field office director's decision. The appeal is therefore summarily dismissed.

ORDER: The appeal is summarily dismissed.

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[2] Legal custody is presumed, in the case of a child born out of wedlock, only when the child has been legitimated and resides with the natural parent. See 8 C.F.R. § 320.1.