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**U.S. Citizenship  
and Immigration  
Services**

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FILE:



Office: WASHINGTON, DC

Date:

**NOV 17 2009**

IN RE:



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

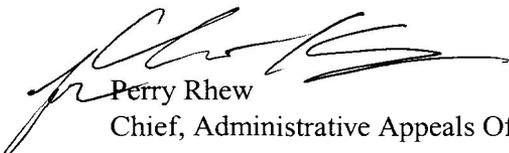
ON BEHALF OF APPLICANT:

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).

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Washington, D.C., 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 September 30, 1991 in Vietnam. The applicant's father, [REDACTED], became a U.S. citizen upon his naturalization on September 13, 2008. The applicant's mother resides in Vietnam and is not a U.S. citizen. The applicant's parents were married in 1986, and divorced in 2003. The applicant's mother was awarded custody of the applicant upon the divorce. The applicant has since been admitted to the United States as a lawful permanent resident and has been residing with his father since 2008. 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 did not acquire U.S. citizenship under section 320 of the Act because he was not in his father's legal custody. The director noted that custody of the applicant was awarded to the applicant's mother upon his parents' divorce. The application was therefore denied.

On appeal, the applicant's father maintains that the applicant is now in his "sole custody." See Statement of Applicant on Form I-290B, Notice of Appeal to the AAO. In support of this claim, the applicant submits a notarized statement executed in 2007 by the applicant's mother indicating that she agrees to allow the applicant to reunite with his father (in the United States).

Section 320 of the Act was amended by the Child Citizenship Act of 2000 (CCA), Pub. L. 106-395, 114 Stat. 1631 (Oct. 30, 2000), 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. CCA § 104. The applicant was under 18 years of age on February 27, 2001. He therefore 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 and that his father naturalized in 2008. The applicant's 18<sup>th</sup> birthday was on September 30, 2009. The question remains whether the applicant was in his father's legal and physical custody.

Legal custody vests by virtue of "either a natural right or a court decree". *Matter of Harris*, 15 I&N Dec. 39, 41 (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." 8 C.F.R. § 322.1. 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." *Matter of M*, 3 I&N Dec. 850, 856 (BIA 1950).

The applicant's parents' divorce decree, issued in 2003, awarded custody of the applicant to his mother. *See Applicant's Parents' Divorce Decree*. The applicant's mother's notarized statement agreeing to allow the applicant to reunite with his father in the United States is not an official, court-ordered modification of the custody order entered in 2003. The AAO must therefore find that the applicant was not in his father's legal custody and did not automatically acquire U.S. citizenship upon his father's naturalization.<sup>1</sup> The AAO thus concludes that the applicant is ineligible for a certificate of citizenship pursuant to section 320 of the Act, 8 U.S.C. § 1431.<sup>2</sup>

8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant, or his or her parent if acting on the claimant's behalf, 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 in the present case has not met his burden and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

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<sup>1</sup> The AAO finds sufficient evidence in the record to establish that the applicant has resided with his father since his admission to the United States, but such evidence establishes only that he was in his father's physical custody, not his father's legal custody.

<sup>2</sup> The AAO notes that the applicant may become eligible for U.S. citizenship under the naturalization provisions of section 316 of the Act, 8 U.S.C. § 1446, once he has accumulated the required residence and physical presence in the United States.