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



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: INDIANAPOLIS, IN Date: OCT 20 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.

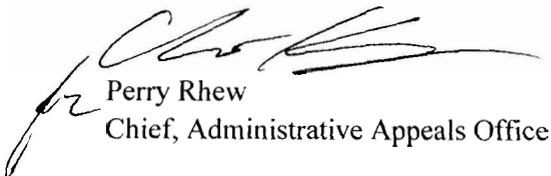
ON BEHALF OF APPLICANT:

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, 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, Indianapolis, Indiana, 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 March 1, 1991 in Yemen. **The applicant was** admitted to the United States in 2007. She was adopted by her step-father, [REDACTED] on September 16, 2008. [REDACTED] became a U.S. citizen upon his naturalization in 2004. The applicant's adopted father married the applicant's mother in 1998 in Yemen. The applicant seeks a certificate of U.S. citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The field office director denied the applicant's citizenship claim finding that she did not meet the definition of "child" set forth in section 101(b)(1)(E) of the Act, 8 U.S.C. § 1101(b)(1)(E). Thus, the director concluded that the applicant was not eligible for citizenship under section 320 of the Act, 8 U.S.C. § 1431, and denied her application.

On appeal, the applicant's adopted father indicates that the applicant has been living with him since his marriage to the applicant's mother in 1998. *See* Statement of the Applicant on Notice of Appeal to the AAO, Form I-290B.

Section 320 of the Act states in pertinent part:

(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.

(b) Subsection (a) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

Section 101(b)(1) of the Act, 8 U.S.C. § 1101(b)(1), states, in pertinent part, that the term "child" means an unmarried person under twenty-one years of age who is-

(E)(i) [A] child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years . . .

The regulation, at 8 C.F.R. § 320.1, defines "adopted" as, in pertinent part, "adopted pursuant to a full, final and complete adoption."

The record reflects that the applicant is a lawful permanent resident of the United States and that her adoptive father is a U.S. citizen. The record contains a copy of the applicant's adoption order, entered in Topeka, Indiana, on September 16, 2008. The two-year residence requirement set forth in section 101(b)(1)(E) of the Act may be satisfied either before or after an adoption. *See* 8 C.F.R. § 204.2(d)(2)(vii)(C). Legal custody, however, vests by virtue of "either a natural right or a court decree". *See Matter of Harris*, 15 I&N Dec. 39, 41 (BIA 1970). Pursuant to the definition of "legal custody" in 8 C.F.R. § 320.1, "[i]n the case of an adopted child, a determination that a U.S. citizen parent has legal custody will be based on the existence of a final adoption decree." In the applicant's case, [REDACTED] obtained legal custody over the applicant through a court ordered adoption decree dated September 16, 2008.¹ The AAO further notes that the applicant was admitted to the United States in November 2007 and USCIS records indicate that her adoptive father has been residing in the United States since 1995. She therefore has not been residing with her adoptive father for the required two-year period. The applicant has not yet satisfied the two-year custody and residence requirement in section 101(b)(1)(E) of the Act. Thus, the AAO concludes that she has not 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. 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 her burden. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.

¹ The "Certificate of Family Sponsorship" submitted by the applicant indicates that her father "sponsor[ed] and support[ed]" her upon his marriage to the applicant's mother, but not that she was in his legal custody.