

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY



E₂

FILE:



Office: NEW YORK, NY

Date:

APR 27 2010

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.

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, New York, New York, 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 December 23, 1990 in the Dominican Republic. The applicant's parents are [REDACTED] and [REDACTED]. The applicant's parents were married in 1991 and divorced in 1995. The applicant's father became a U.S. citizen upon his naturalization on October 26, 2007, when the applicant was 16 years old. The applicant was admitted to the United States as a lawful permanent resident on November 1, 2008, when he was 17 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 district director denied the application finding that the applicant had failed to establish that he was in this father's legal custody. On appeal, the applicant's father maintains that the applicant has been in his custody pursuant to a sworn affidavit signed by the applicant's mother, and that the applicant has been residing with him since his admission as a lawful permanent resident. *See Applicant's Appeal Brief.*

Section 320 of the Act was amended by the Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), and took effect on February 27, 2001. CCA § 104. The CCA benefits all persons who had not yet reached their eighteenth 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 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's father naturalized, and that the applicant was admitted to the United States as a lawful permanent resident, prior to the applicant's eighteenth birthday. The question remains whether the applicant was residing in the United States, in his father's custody.

The record shows that the applicant was in his father's legal custody. 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 regulation at 8 C.F.R. § 320.1 states that 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." In this case, the applicant's parents were married a few months after his birth. The applicant was therefore born out of wedlock. He was, however, legitimated under the laws of the Dominican Republic. In *Matter of Martinez*, 21 I&N Dec. 1035, 1038 (BIA 1997), the Board of Immigration Appeals (BIA) held that when a country eliminates all legal distinctions between children born in and out of wedlock, as the Dominican Republic has done with the enactment of the Code for the Protection of Children (effective January 1, 1995), all children are deemed to be legitimate or legitimated children of their natural fathers from the time that the country's laws are changed.

The applicant's parents' divorce judgment does not award custody of the applicant to his mother. Moreover, the record contains two sworn statements, executed in 2007 and 2009, respectively, whereby the applicant's mother "cedes" custody of the applicant to the applicant's father. The record also contains evidence to establish that the applicant was residing with his father after his admission to the United States and before his eighteenth birthday. Accordingly, the applicant's father had legal and physical custody of the applicant.

The AAO concludes that the applicant was residing in the United States in the physical and legal custody of his U.S. citizen father, prior to his eighteenth birthday, and pursuant to a lawful admission for permanent resident. He therefore automatically acquired U.S. citizenship under section 320 of the Act, 8 U.S.C. § 1431.

Pursuant to 8 C.F.R. § 341.2(c), 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 this case has met his burden to prove that he automatically acquired U.S. citizenship pursuant to section 320 of the Act and the appeal will be sustained.

ORDER: The appeal is sustained.