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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**

E2

[Redacted]

FILE:

[Redacted]

Office:

[Redacted]

Date: **AUG 20 2010**

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you.

[Redacted signature]

Office

**DISCUSSION:** The application was denied by the District Director, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on June 18, 1986 in Yemen. The applicant's parents

The applicant's [REDACTED] when the

[REDACTED] The applicant's mother is not a U.S. citizen. The applicant was admitted to the United States as a permanent resident on [REDACTED]

The applicant's eighteenth birthday was on June 18, 2004. The applicant presently seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The district director determined that the applicant did not automatically acquire U.S. citizenship through his father because he was not in his father's physical custody after his admission to the United States. The director noted that documents in the record indicated that the applicant's father was absent from the United States for three years after the applicant's admission to the United States during which time the applicant resided with his uncle. The application was accordingly denied.

On appeal, the applicant's father maintains that the applicant was in his physical custody prior to his eighteenth birthday. See Statement Accompanying Form I-290B, Notice of Appeal to the AAO. Specifically, the applicant's father states that he accompanied the applicant to the United States when he was admitted on July 30, 2002 and that he was only absent from the United States for a period of six months. See *id* and undated letters from applicant's father submitted on appeal. The applicant's f [REDACTED]

The applicable law for derivative citizenship purposes is "the law in effect at the time the critical events giving rise to eligibility occurred." See *Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9<sup>th</sup> Cir. 2005). Section 320 of the Act, as amended by the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), provides for automatic acquisition of U.S. citizenship upon the fulfillment of certain conditions prior to a child's eighteenth birthday. The CCA, which took effect on February 27, 2001, is not retroactive, and applies only to persons who were not yet 18 years old as of February 27, 2001. Because the applicant was under the age of 18 on February 27, 2001, he is eligible for the benefits of the amended Act. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

Section 320 of the Act, as amended, 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 applicant has established that his father naturalized and that he was admitted to the United States as a lawful permanent resident prior to his eighteenth birthday. The question remains, however, whether the applicant can establish that he was residing in his father's legal and physical custody prior to his eighteenth birthday. Legal custody vests by virtue of "either a natural right or a court decree". See *Matter of Harris*, 15 I&N Dec. 39, 41 (BIA 1970). The regulations provide that legal custody "refers to the responsibility for and authority over a child." See 8 C.F.R. § 320.1 (defining "legal custody"). Under the regulation, legal custody is presumed "[i]n the case of a biological child who currently resides with both natural parents (who are married to each other, living in marital union, and not separated)." In this case, the applicant's parents are married to each other, but according to the Form N-600, Application for Certificate of Citizenship, the applicant's mother [REDACTED]. Consequently, legal custody cannot be presumed, but may be established by other, relevant evidence demonstrating that the applicant's father had responsibility for and authority over the applicant.

In a letter dated June 6, 2003, the applicant's father explained that he was financially supporting the applicant while he was in Yemen and since his return to the United States in 2003. The applicant's father's 2002 income tax return lists the applicant as a dependent. These and other documents in the record dated in 2002 and 2003 list the same address for the applicant and his father. In the aggregate, the evidence submitted below and on appeal establishes that the applicant was in his father's physical and legal custody. The record indicates that he resided with his father and his father exercised responsibility and authority over him prior to his eighteenth birthday. See 8 C.F.R. § 320.1. Accordingly, the applicant met all the requirements for automatic derivation of citizenship under section 320 of the Act prior to his eighteenth birthday.

In addition, the record contains a copy of the applicant's U.S. passport. In *Matter of Villanueva*, 19 I&N Dec. 101 (BIA 1984), the Board of Immigration Appeals (Board) held that a valid U.S. passport is conclusive proof of U.S. citizenship. Specifically, the Board held in *Matter of Villanueva* that:

unless void on its face, a valid United States passport issued to an individual as a citizen of the United States is not subject to collateral attack in administrative immigration proceedings but constitutes conclusive proof of such person's United States citizenship.

The burden of proof in these proceedings is on the claimant to establish the claimed citizenship by a preponderance of the evidence. *See* Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2. The applicant has met his burden of proof, and his appeal will be sustained. The matter will be returned to the New York City Field Office for issuance of a certificate of citizenship.

**ORDER:** The appeal is sustained. The matter is returned to the New York City Field Office for issuance of a certificate of citizenship.