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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:

Office: NEW YORK, NY

Date:

FEB 17 2010

IN RE:

Applicant:

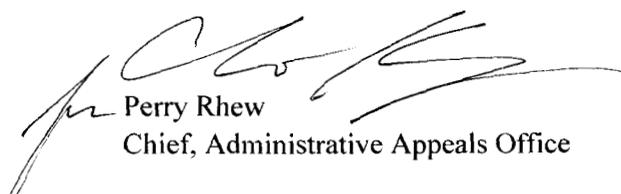
APPLICATION:

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

ON BEHALF OF APPLICANT:

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.


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 matter will be remanded to the District Director for action consistent with this decision.

The record reflects that the applicant was born February 21, 1991 in Egypt. The applicant's father, [REDACTED] became a U.S. citizen upon his naturalization on May 1, 1996, when the applicant was five years old. The applicant's mother, [REDACTED] is not a U.S. citizen. The applicant's parents were married in 1995. The applicant became a lawful permanent resident of the United States on October 11, 2008. He presently seeks a certificate of citizenship claiming that he derived U.S. citizenship through his father.

The District Director found the applicant ineligible for citizenship under section 320 of the Immigration and Nationality Act (the Act), as amended by the Child Citizenship Act of 2000 (CCA).¹ The District Director's decision was based on the finding that the applicant was not residing in the United States in his father's custody. On appeal, the applicant submitted a letter verifying that he was enrolled in a University in Egypt. The applicant, through counsel, maintained that he was residing in the United States in his father's custody, but that he traveled back to Egypt to complete his course of study. *See Applicant's Appeal Brief.*

On October 2, 2009, the AAO issued a Request for Further Evidence of the applicant's residence between October 2008 and February 2009. The AAO received the applicant's response on December 22, 2009. The applicant's response consists of a copy of the first page of his father's 2008 Form 1040 (listing him as a dependent, but not qualifying for the child tax credit), a signed letter from his mother "granting permission [to the applicant] to immigrate to the United States," and a translated letter signed recently by the applicant's mother stating that she "authorized the issuance of an American Passport" to the applicant.

The AAO finds that the evidence submitted in response to the Request for Further Evidence does not pertain to the question of the applicant's residence between October 2008 and February 2009.² As

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.

² The AAO noted in its Request for Further Evidence that the term residence is defined in section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33), as "the place of general abode . . . his principal, actual dwelling place in fact, without regard to intent." The AAO noted that evidence of residence was required in order to establish

noted in the AAO's Request for Further Evidence, the record indicates that the applicant was enrolled in a university in Egypt. The record contains a copy of the applicant's U.S. passport (issued on October 17, 2008) evidencing that the applicant was present in the United States from March 9 to March 20, 2009. The applicant's mother's letters authorizing his immigration to the United States do not pertain to the question of his presence in the United States. The front page of the applicant's father's 2008 Form 1040 does not establish that the applicant was residing with him during 2008. Legal custody of a child born out of wedlock cannot be presumed in the absence of evidence that the applicant was residing with his natural father. 8 C.F.R. § 320.1.³

As noted above, 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 stated 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.

Where, as here, it is unclear whether the applicant established statutory eligibility for U.S. citizenship, a Certificate of Citizenship cannot be issued. The USCIS Adjudicator's Field Manual at § 71.1(e) instructs that

An unexpired United States passport issued for 5 or 10 years is now considered prima facie evidence of U.S. citizenship. Because it does not provide the actual basis upon which citizenship was acquired or derived, the submission of additional documentation may be required or the passport file may be requested. If after review there are differences or discrepancies between the USCIS information and the Passport Office records which would indicate that the application should not be approved, no action should be taken until the Passport Office has an opportunity to review and decide whether to revoke the passport.

The matter must therefore be remanded to the District Director to request that the Passport Office review and decide whether to revoke the applicant's passport. The director shall issue a new decision once the Passport Office's review is completed and, if adverse to the applicant, certify the decision to the AAO for review.

that the applicant was in his father's legal and physical custody. The AAO also noted that if no sufficient evidence was provided to establish the applicant's eligibility for U.S. citizenship, USCIS may request that the Passport Office review the matter and, if appropriate, revoke the applicant's passport.

³ Under 8 C.F.R. § 320.1, 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."

ORDER: The matter is remanded to the director for action consistent with this decision and issuance of a decision, which, if adverse to the applicant, shall be certified to the Administrative Appeals Office for review.