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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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[REDACTED]

FILE:

Office: VERMONT SERVICE CENTER

Date:

FEB 19 2010

IN RE:

[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:

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 Acting Service Center Director, Vermont Service Center, 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 September 2, 1994 in Morocco. The applicant's biological parents are [REDACTED] and [REDACTED]. The applicant was adopted on April 27, 2004 by [REDACTED], his maternal uncle. The applicant's adoptive father became a U.S. citizen on November 1, 1995, when the applicant was one year old. The applicant was admitted to the United States as a lawful permanent resident on August 30, 2006, when he was 11 years old. 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 Acting Service Center Director determined, in relevant part, that the applicant had failed to establish that he was in his adoptive father's physical custody as is required by section 320 of the Act, 8 U.S.C. § 1431. The application was accordingly denied.

On appeal, the applicant, through counsel, maintains that he is in his adoptive father's physical custody. *See* Appeal Brief. In support of his appeal, the applicant submits, among other things, a lease agreement signed by his adoptive father for the property where the family resides, rental payments, school and medical records listing the applicant's adoptive father as a guardian or contact person, and statements made by the applicant's mother and a family friend.

The Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), which took effect on February 27, 2001, amended sections 320 and 322 of the Act, and repealed section 321 of the Act. The provisions of the CCA are not retroactive, and the amended provisions of section 320 and 322 of the Act apply only to persons who were not yet 18 years old as of February 27, 2001. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Because the applicant was under the age of 18 on February 27, 2001, he is eligible for the benefits of the amended Act.

Section 320 of the amended Act, 8 U.S.C. § 1431, 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 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 applicant must thus establish that he is the adopted child of a U.S. citizen, under whose legal and physical custody he is residing pursuant to a lawful admission for permanent residence.

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 provides that legal custody in the case of an adopted child is “based on the existence of a final adoption decree.” The AAO notes that the record contains a copy of an adoption judgment issued by the Circuit Court for Baltimore City, Maryland, declaring *inter alia* that [REDACTED] as the applicant’s legal parent. The AAO thus finds that the applicant is in his adoptive father’s legal custody.

The AAO further finds that the applicant is residing in the United States, in the physical and legal custody of his adoptive father. In this regard, the AAO notes the evidence submitted by the applicant on appeal. Particularly, the AAO notes the lease agreement signed by the applicant’s adoptive father for the property where the family resides, rental payments, school and medical records listing the applicant’s adoptive father as a guardian or contact person, and statements made by the applicant’s mother and a family friend.

The regulation at 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 AAO concludes that the applicant has met his burden to establish, by a preponderance of the evidence, that he acquired U.S. citizenship through his adoptive father. The appeal will therefore be sustained.

ORDER: The appeal is sustained.