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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



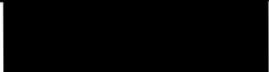
U.S. Citizenship
and Immigration
Services

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FILE:



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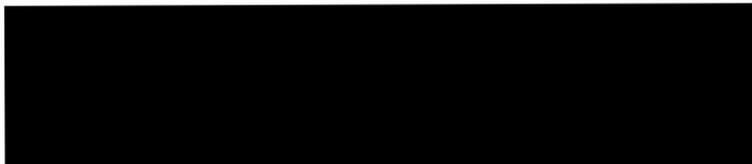
Applicant



APPLICATION:

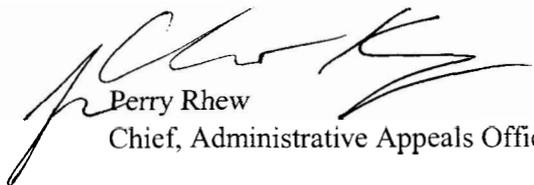
Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act; 8 U.S.C. §1431.

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 Field Office Director, Dallas, Texas, 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 13, 1995 in France. The applicant's birth certificate indicates that his parents are [REDACTED] and [REDACTED]. The applicant's parents were divorced in 1998 in France, and the applicant's mother was remarried in 2000 to [REDACTED]. The applicant's step-father is a U.S. citizen, naturalized on August 26, 2004. The applicant was admitted to the United States as a lawful permanent resident on October 27, 2006. The applicant seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The field office director concluded that the applicant did not acquire U.S. citizenship pursuant to section 320 of the Act, 8 U.S.C. § 1431, because he was not the biological child of a U.S. citizen. On appeal, the applicant submits the results of a DNA test and maintains that he is the biological child of [REDACTED] a U.S. citizen.

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. The CCA benefits all persons who had not yet reached their 18th birthdays as of February 27, 2001. Because the applicant is under 18 years old, he meets the age requirement for benefits under the CCA.

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.

- (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).

The definition of "child" applicable to the citizenship and nationality provisions in Title III of the Act is contained in section 101(c) of the Act, 8 U.S.C. § 1101(c), and provides as follows:

...an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere, and except as otherwise provided in section 320 and 321 of the title III, a child adopted in the United States, if such legitimation

or adoption takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

The applicant claims that she acquired U.S. citizenship through [REDACTED]. The record contains a copy of DNA test results establishing a 99.9981% probability that [REDACTED] is the applicant's biological father. The AAO notes that the applicant's birth certificate lists [REDACTED] as the applicant's father, and that [REDACTED] has been until now listed as the applicant's step-father in the applicant's immigration documents. [REDACTED] married the applicant's mother in January 2000.

Although the applicant's biological parents were not married to each other when the applicant was born, they subsequently married in 2000 and therefore the applicant may be considered the legitimate child of [REDACTED]. *See Matter of J*, 7 I&N Dec. 338 (BIA 1956) (a child born out of wedlock in France was legitimated by the subsequent marriage of his natural parents plus acknowledgment prior to or contemporaneous to the marriage); *see also* 2001 Advisory Opinions by Library of Congress (LOC 2001-11073 and 11074) (explaining that since 1972, French law distinguishes three forms of legitimation: (1) legitimation by the subsequent marriage of the father and mother plus acknowledgment before or at the time of marriage; (2) post nuptial legitimation which covers the case of a child who was not acknowledged before the marriage of his or her parents; and (3) legitimation by authority of the court which may be conferred upon a child when it appears that the marriage is impossible (due to death, absence, or the marriage to another person) between the two parents, provided that the child has possession of the status of natural child, at the place of the parent who requests it).

The AAO finds that the applicant is the legitimate child of [REDACTED], a U.S. citizen, and is residing in his legal and physical custody in the United States pursuant to a lawful admission for permanent residence. Consequently, the applicant has 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 the present case is the biological child of a U.S. citizen, in whose custody he is residing in the United States. He has therefore acquired U.S. citizenship under section 320 of the Act, 8 U.S.C. § 1431, and his appeal will be sustained.

ORDER: The appeal is sustained.