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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

Date:

JUL 15 2010

IN RE:

Applicant:

APPLICATION:

Application for Certificate of Citizenship under Section 309 of the Immigration and Nationality Act; 8 U.S.C. § 1409.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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,

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 director for action consistent with this decision.

The record reflects that the applicant was born on July 10, 1987 in the Dominican Republic. The applicant's parents, as indicated on his birth certificate, are [REDACTED]. The applicant's father became a U.S. citizen upon his naturalization on July 31, 1974. The applicant's parents were married in New York in 1996. The applicant was admitted to the United States as a lawful permanent resident on May 22, 1999, when the applicant was 11 years old. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship through his father.

The district director found that the applicant had failed to establish that he acquired U.S. citizenship at birth under section 309 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1409.¹ On appeal, the applicant does not submit any additional evidence or argument.

The matter will be remanded to the director for consideration of the applicant's eligibility for U.S. citizenship under the Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000).

The CCA, which amended sections 320 and 322 of the Act, took effect on February 27, 2001. 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, 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.

The evidence in the record establishes that the applicant was admitted to the United States as a lawful permanent resident prior to his eighteenth birthday. The record further establishes that his

¹ The AAO agrees with the district director that the applicant has failed to establish that he acquired U.S. citizenship at birth under section 309(a) of the Act.

father has been a U.S. citizen since 1992, and that his parents have been married since 1996. The question remains whether the applicant can establish that he was residing in the United States in the legal and physical custody of his U.S. citizen father prior to his eighteenth birthday, in 2007. The tax documentation and immigrant visa records suggest that the applicant intended to reside with his father upon his admission to the United States. The matter must be remanded to the director to request additional evidence of the applicant's custody prior to his eighteenth birthday.

Upon remand, the director shall request additional evidence relating to the applicant's residence and custody and determine whether the applicant was residing in the United States in the legal and physical custody of his U.S. citizen father. The director shall then issue a new decision which, if adverse to the applicant, shall be certified to the AAO for review.

ORDER: The matter is remanded to the director for action consistent with this decision.