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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:

[REDACTED]

Office: HIALEAH, FLORIDA

Date:

JUN 01 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:

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Hialeah, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Nicaragua on January 8, 1992. The applicant's parents were married at the time of his birth. The applicant's father became a naturalized U.S. citizen on September 28, 2004. The applicant was admitted to the United States as a lawful permanent resident on June 19, 2009. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship from his father pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The director determined that the applicant failed to establish that he was in the legal and physical custody of his father, and denied the application accordingly. *See Decision of the Director*, dated Sep. 21, 2009. On appeal, the applicant's father states that the applicant lives with him and that he will always take care of him. *See Form I-290B, Notice of Appeal*, dated Oct. 20, 2009. The applicant's father also submits a document from the applicant's mother providing the applicant's father with "full authorization over [the applicant]." *See Testimony of* [REDACTED] dated Oct. 19, 2009.

Section 320 of the Act, as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (CCA), applies to this appeal because the applicant was not yet 18 years old as of the February 27, 2001 effective date of the CCA. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 156 (BIA 2001) (en banc). Section 320(a) of the Act, 8 U.S.C. § 1431(a), provides:

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 record reflects that the applicant reached his eighteenth birthday on January 8, 2010. Accordingly, the applicant is statutorily ineligible for a certificate of citizenship because he does not meet the age limitation set forth in section 320(a)(2) of the Act. Because the applicant is now 18 years old, we do not reach the issue of whether or not he is residing in the United States in the legal and physical custody of his U.S. citizen father.

A person may obtain citizenship only in strict compliance with the statutory requirements imposed by Congress, and the AAO lacks the authority to use equitable powers to issue a certificate of citizenship when an applicant fails to meet the relevant statutory provisions. *See INS v. Pangilinan*, 486 U.S. 875, 883-84 (1988). Moreover, "it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect," and that any doubts concerning citizenship are to be resolved in favor of the United States. *Berenyi v. District Director, INS*, 385 U.S. 630, 637 (1967). The applicant must meet this burden by establishing the claimed

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citizenship by a preponderance of the evidence. 8 C.F.R. § 320.3. Here, the applicant has not met this burden. Accordingly, the applicant is not eligible for a certificate of citizenship under section 320(a) of the Act, and the appeal will be dismissed.

ORDER: The appeal is dismissed.