

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

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**

E2

[REDACTED]

FILE:

[REDACTED]

Office: PHILADELPHIA, PENNSYLVANIA

Date:

JUN 18 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:

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, Philadelphia, Pennsylvania, 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 Trinidad and Tobago on June 20, 1993, to [REDACTED]. The applicant's parents married on March 30, 1994. The applicant was admitted to the United States on July 5, 2004, as the child of a lawful permanent resident alien awaiting availability of an immigrant visa. The applicant's father became a U.S. citizen upon his naturalization on October 27, 2005. On April 12, 2008, U.S. Citizenship and Immigration Services (USCIS) granted the applicant lawful permanent resident status. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship from her 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 she was in the physical custody of her father, and denied the application accordingly. *See Decision of the Director*, dated Aug. 19, 2009. On appeal, the applicant contends through counsel that she resides in the physical custody of her U.S. citizen father. *See Form I-290B, Notice of Appeal*, filed Sep. 17, 2009; *Brief on Appeal*.

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.

Under the Act, "[t]he term 'residence' means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent." Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33).

The record reflects that the applicant resides in Pennsylvania, with her mother and sister. *See Affidavit of [REDACTED]* dated Sep. 1, 2009; *Letter from [REDACTED]* *Letter from [REDACTED]*. The applicant's father has been employed as a hotel manager in Puerto Rico since December, 2003. *See Affidavit of [REDACTED]* *Letter from [REDACTED]* dated Aug. 27, 2008 (confirming residence and employment in Puerto Rico); *Tax Records* (same). [REDACTED] contends that the applicant resides in his physical custody because: (1) he remains married to the applicant's mother; (2) his name is listed on the Pennsylvania residential lease and the applicant's school records; (3) he supports the applicant financially and is involved with every major decision in

the applicant's life; and (4) he is "frequently in Philadelphia to visit with [his] wife and children."  
*Affidavit of* [REDACTED]

Here, the applicant's "place of general abode" is Haverford, Pennsylvania. Section 101(a)(33) of the Act. Her father's "actual dwelling place in fact, without regard to intent," is in Puerto Rico, where he is employed. *Id.* Additionally, the record lacks evidence to support the applicant's claim that Mr. Lopez is frequently in Pennsylvania with his family. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1993) ("Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings."). Accordingly, the applicant is statutorily ineligible for a certificate of citizenship because she does not meet the physical custody requirement set forth in section 320(a)(3) of the Act.

The applicant must meet her burden of proof by establishing the claimed 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.

This dismissal is without prejudice to the future filing of an Application for Naturalization (Form N-400) when the applicant meets the eligibility requirements.

**ORDER:** The appeal is dismissed.