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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: MIAMI, FLORIDA Date: JUN 2 8 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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Application for Certificate of Citizenship (N-600) was denied by the Field Office Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the appeal will be sustained.

The record reflects that the applicant was born in Jamaica on May 11, 1990, to [redacted] The applicant's father is not listed on her birth certificate, and her birth parents never married. The applicant was admitted to the United States on September 16, 1999, as a lawful permanent resident. The applicant's mother became a U.S. citizen upon her naturalization on December 19, 2006. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship from her mother pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The director denied the application because the applicant failed to respond to the director's request for a copy of her mother's Certificate of Naturalization. *See Decision of the Director*, dated Sep. 4, 2009. On appeal, the applicant's mother submits a copy of her Certificate of Naturalization. *See Form I-290B, Notice of Appeal*, filed Sep. 25, 2009.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering this decision 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 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 regulations define the term "legal custody" to refer to "the responsibility for and authority over a child." 8 C.F.R. § 320.1. Under the CCA, a child born out of wedlock who has not been legitimated may derive citizenship through his or her naturalizing mother.

Here, the applicant fulfilled all of the requirements for derivative citizenship under section 320(a) of the Act before her eighteenth birthday. First, the applicant has been residing in the United States pursuant to a lawful admission for permanent residence since September 16, 1999, when she was nine years old. Second, the applicant's mother became a citizen of the United States by naturalization on December 19, 2006, when the applicant was 16 years old. Third, given the evidence of the applicant's residence with her U.S. citizen mother in the United States, the applicant meets the legal and physical custody requirements set forth in section 320(a)(3) of the Act and 8

C.F.R. § 320.1. *See Immigrant Visa*, issued Aug. 28, 1996 (indicating the applicant's admission as the child of an unmarried son or daughter of a U.S. citizen); *2007 and 2008 Tax Returns* (listing the applicant as her mother's dependent). Finally, the applicant may derive U.S. citizenship through her mother because she was not legitimated by her father.[1] *See Matter of Hines,* 24 I&N Dec. 544, 548 (BIA 2008) (holding that the sole means of legitimation of a child born out of wedlock in Jamaica is the marriage of the child's parents); *Matter of Martinez*, 18 I&N Dec 399, 400-01 (BIA 1983) (holding that legitimation in Florida requires marriage of the birth parents).

The applicant bears the burden of proof to establish her eligibility for citizenship under section 320 of the Act. 8 C.F.R. § 320.3. Here, the applicant has established by a preponderance of the evidence that all the conditions for the automatic acquisition of U.S. citizenship pursuant to section 320 of the Act have been met. Accordingly, the decision of the director will be withdrawn, the appeal will be sustained, and the matter will be returned to the director for issuance of a certificate of citizenship.

ORDER: The appeal is sustained. The matter is returned to the Miami Field Office for issuance of a certificate of citizenship.

[1] In a letter responding to the director's first request for additional evidence, the applicant's mother explained that her former husband is not the applicant's biological father, whom she never married, although both men are surnamed Smith. On the applicant's immigrant visa application, she stated her father's name as Kenneth Smith and indicated that he resided in Connecticut. The applicant's mother's divorce decree identifies her former husband as Rodney Smith, a resident of Florida.