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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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FILE:

Office: DALLAS, TEXAS

Date: **MAY 04 2010**

IN RE:

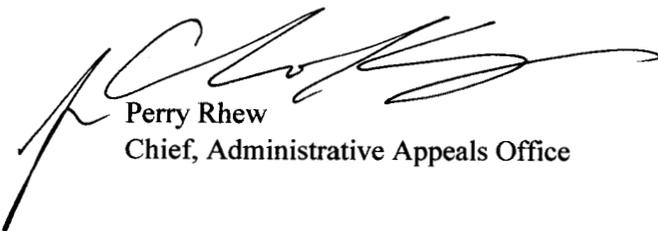
APPLICATION: Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act, 8 U.S.C. § 1431.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

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, Irving, Texas, 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 The decision of the director will be withdrawn and the appeal will be sustained.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 Ghana on July 21, 1992, to [REDACTED] and [REDACTED]. See *Birth Certificate*. The record reflects that the applicant's parents did not marry. On October 17, 2002, the applicant's father married [REDACTED] a U.S. citizen. See *Marriage Certificate*. The applicant was admitted to the United States on July 23, 2003, as the child of a spouse of a U.S. citizen awaiting availability of an immigrant visa. See *I-94 Arrival – Departure Record*. On June 23, 2004, the applicant's mother executed a declaration relinquishing legal custody of the applicant to his father. See *Statutory Declaration Confirming Parentage*. On March 8, 2005, U.S. Citizenship and Immigration Services (USCIS) granted the applicant lawful permanent resident status. See *Form I-485, Application to Register Permanent Resident or Adjust Status*. The applicant's father became a U.S. citizen upon his naturalization on July 23, 2008, when the applicant was nearly 16 years old. See *Certificate of Naturalization for [REDACTED]*. 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 custody of his father. See *Decision of the Director*, dated July 4, 2009. The application was denied accordingly. *Id.* On appeal, the applicant's father contends that the director erred in denying his application because the applicant is under his legal custody. See *Form I-290B, Notice of Appeal*, filed Aug. 4, 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 regulations define the term "legal custody" to refer to "the responsibility for and authority over a child." 8 C.F.R. § 320.1. Additionally,

For the purpose of the CCA, the Service will presume that a U.S. citizen parent has legal custody of a child, and will recognize that U.S. citizen parent as having lawful authority over the child, absent evidence to the contrary, in the case of . . . a

biological child born out of wedlock who has been legitimated and currently resides with the natural parent.

Id. Further, for naturalization and citizenship purposes, the term “child” means:

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

Section 101(c) of the Act, 8 U.S.C. § 1101(c)(1).

Here, the applicant meets all of the requirements set forth in sections 101(c) and 320(a) of the Act. First, although the applicant provided no information or evidence pertaining to legitimation laws in Ghana, an advisory opinion from the Library of Congress entitled, “Children Born Out of Wedlock and Legitimation in Ghana” (June 3, 1994) (LOC 94-1737) states that every child is legitimate in Ghana, and that the concept of illegitimacy and its social and legal consequences are foreign to Ghanaian customs and traditions. The Library of Congress further found that no law has been enacted on the legitimation of children born out of wedlock in Ghana, and that the existence of the father’s name on the child’s birth certificate reflects the father’s acknowledgment and legitimation of the child. Here, the birth certificate submitted by the applicant contains his father’s name. Because the applicant was acknowledged and legitimated by his father in Ghana before his 16th birthday, he meets the definition of “child” in section 101(c) of the Act.

Second, the applicant has been residing in the United States pursuant to a lawful admission for permanent residence since March 8, 2005. Third, the applicant’s father became a citizen of the United States by naturalization July 23, 2008, when the applicant was nearly 16 years old. Fourth, the applicant is currently under the age of 18 years.

Finally, given the evidence of the applicant’s residence with his biological U.S. citizen father 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 K4 Visa*, issued July 10, 2003 (indicating the applicant’s admission as his father’s derivative); *Form I-864, Affidavit of Support* (listing the applicant as his father’s dependent); *Tax Returns* (same); *Healthcare Membership Cards*; *Statutory Declaration Confirming Parentage*, dated June 23, 2004 (declaring under Ghanaian Statutory Declarations Act of 1971 that the applicant is under the legal custody of his birth father and stepmother).

The applicant bears the burden of proof to establish his 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 immediate action in accordance with this decision before the applicant turns 18 on July 21, 2010.

ORDER: The appeal is sustained. The matter is returned to the Dallas Field Office for issuance of a certificate of citizenship prior to the applicant's eighteenth birthday on July 21, 2010.