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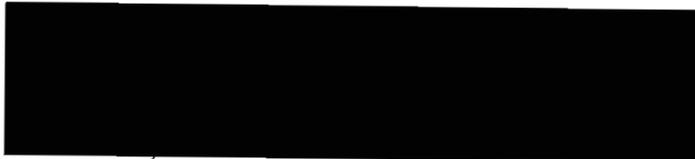
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: NEW YORK, NY Date: MAY 05 2010

IN RE: Applicant: [REDACTED]

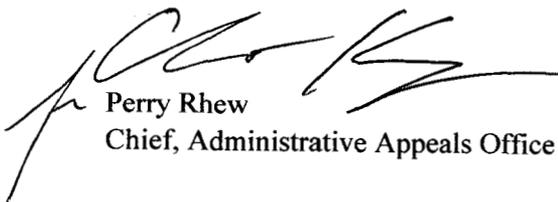
APPLICATION: Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act; 8 U.S.C. §1431

ON BEHALF OF APPLICANT:



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 Field Office Director, Buffalo, New York, denied the application and dismissed the subsequent motion.¹ The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on March 25, 1983 in the Dominican Republic. The applicant's parents are [REDACTED]. The applicant's parents were never married to each other. The applicant's father became a U.S. citizen upon his naturalization on August 18, 1995. The applicant adjusted his status to that of a lawful permanent resident of the United States on September 20, 1990. The applicant seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, based on the claim that he acquired U.S. citizenship through his father.²

The field office director concluded that the applicant did not acquire U.S. citizenship upon finding that he was not in her father's legal and physical custody. The application was accordingly denied.

On appeal, the applicant maintains that he was in his father's custody and that the director erred in not properly considering the evidence submitted. See Applicant's Statement on Form I-290B, Notice of Appeal to the AAO and Appeal Brief.

Section 320 of the Act was amended by the Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), and took effect on February 27, 2001. CCA § 104. The CCA benefits all persons who had not yet reached their eighteenth birthdays as of February 27, 2001. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Because the applicant was under 18 years old on February 27, 2001, he meets the age requirement for benefits under the CCA.³

¹ The applicant's first Form N-600, Application for Certificate of Citizenship, was denied in 2007. A subsequent Motion to Reopen and Reconsider was dismissed. In 2009, the applicant, through counsel, attempted to file a new Form N-600 but was instructed to file a Motion to Reopen and Reconsider. The regulation at 8 C.F.R. § 341.6 provides that a second Form N-600 must be rejected and the applicant instructed to submit a motion to reopen or reconsider.

² The applicant previously claimed that he derived U.S. citizenship under section 322 of the Act, 8 U.S.C. § 1433. Section 322 of the Act requires, in pertinent part, the adjudication and approval of the application prior to the applicant's eighteenth birthday. Since the applicant is now 27 years old, he is no longer eligible to derive citizenship under section 322 of the Act and we need not further address his claim for citizenship under that provision.

³ The CCA repealed former section 321 of the Act, 8 U.S.C. § 1432, as of February 27, 2001. The AAO therefore will not consider the applicant's eligibility for citizenship under former section 321 of the Act, 8 U.S.C. § 1432.

Section 320 of the Act 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 record indicates that the applicant was admitted to the United States as a lawful permanent resident and that his father naturalized prior to his eighteenth birthday. The applicant has also established that he was legitimated under the laws of the Dominican Republic. *See Matter of Martinez*, 21 I&N Dec. 1035, 1038 (BIA 1997) (holding that children under the age of 18 at the time the 1994 Code for the Protection of Children was enacted are deemed to be legitimate). 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.

Legal custody vests by virtue of “either a natural right or a court decree.” *Matter of Harris*, 15 I&N Dec. 39, 41 (BIA 1970). The regulations provide that legal custody will be presumed “[i]n the case of a biological child born out of wedlock who has been legitimated and currently resides with the natural parent.” 8 C.F.R. § 320.1 (defining “legal custody”).

The field office director cited a New York City Department of Probation Report in support of his finding that the applicant was not residing with his father from February 27, 2001 (the effective date of the CCA) until March 25, 2001 (the applicant’s eighteenth birthday). The director noted that the report indicates that the applicant’s father stated in a telephone conversation in June 2002 that the applicant had not lived with him in 3 to 5 years. The report also states, however, that the applicant’s father’s telephone statement contradicted an April 2002 interview report where the applicant’s residence with his father was verified. The report also notes that the applicant’s father “did not want to talk about his son” and “was very upset” with him. *See* Decision of the Field Office Director at 3 (citing 2002 New York City Department of Probation Report).

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). According to the field office director, the information in the probation report was contemporaneous and therefore more credible that the applicant’s father’s affidavit in which he attested to his legal and physical custody of the applicant from the time they immigrated to the United States in 1990 until 2002. The director’s reliance on the probation report, to the exclusion of

other probative evidence, is unwarranted given the contradictory information in the report itself, the documentary evidence in the record, as well as the recounted state of mind of the applicant's father at the time of the 2002 telephone conversation.

The applicant and his father submitted detailed affidavits stating that the applicant had resided with his father since his admission to the United States as a lawful permanent resident (in 1990). The record contains several documents supporting their statements. A social security payment record of the applicant lists two dates in February and March 2001 and states the applicant's address as his father's residence in the Bronx, New York. Other documents attesting to the applicant's residence with his father include a letter from the Bronx Social Security Office verifying that the applicant "and his father shared the same address" until April 2001; a Hudson County Juvenile Court record stating that in 2001 the applicant was living with his father; a letter from the applicant's pediatrician affirming that the applicant's father brought him for medical appointments from 1994 through 2001; a detailed affidavit from a family friend of over 20 years confirming that until 2002, the applicant "never lived without his father;" and a copy of the applicant's father's 2000 federal income tax return listing the applicant as his dependent.

Upon a complete review of the record, the applicant has established by a preponderance of the evidence that he was residing with his father between February 27, 2001 (when the CCA went into effect) and his eighteenth birthday (on March 25, 2001). The applicant therefore is presumed to have been in his father's legal custody, pursuant to the regulation at 8 C.F.R. § 320.1. Accordingly, the applicant automatically acquired U.S. citizenship through his father under section 320 of the Act, 8 U.S.C. § 1431.

The regulation at 8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant has met his burden of proof, and his appeal will be sustained.

ORDER: The appeal is sustained.