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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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U.S. Citizenship
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FILE: [REDACTED] Office: MIAMI, FLORIDA Date: OCT 07 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:



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 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 The decision of the director will be withdrawn and the appeal will be sustained.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 Michoacan, Mexico on February 6, 1996, to unmarried parents [REDACTED]. The applicant's father became a U.S. citizen upon his naturalization on December 15, 2004. The applicant's mother is not a citizen of the United States. On February 7, 2008, U.S. Citizenship and Immigration Services (USCIS) granted the applicant lawful permanent resident status. 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 legitimated by his father, and denied the application accordingly. *See Decision of the Director*, dated May 12, 2010. On appeal, the applicant contends through counsel that he has been legitimated by his father under Mexican law. *See Form I-290B, Notice of Appeal*, filed June 10, 2010.

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, the record reflects that the applicant's paternity was established by legitimation under the laws of Michoacan, Mexico. According to a 2004 advisory opinion from the Library of Congress (LOC No. 2004-416), parentage in Michoacan is governed by the Civil Code of Michoacan ("Code"). Under the Code, all children have equal rights regardless of whether they were born within a union not bound by marriage or within a marriage. Further, parentage may be established by voluntary acknowledgment or by a final court order. Here, the applicant's paternity was established by his father's voluntary acknowledgment on the applicant's birth certificate. Because, the applicant's paternity was established by legitimation in Mexico before his sixteenth birthday, he meets the definition of "child" in section 101(c) of the Act.

Second, the applicant's father became a citizen of the United States by naturalization on December 15, 2004, when the applicant was eight years old. Third, the applicant has been residing in the United States pursuant to a lawful admission for permanent residence since February 7, 2008. 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 Application for Immigrant Visa* (indicating the applicant's intent to reside at his father's address); *Form I-864, Affidavit of Support* (listing the applicant as his father's dependent); *Tax Returns* (same); *School Record for* [REDACTED] (reflecting the applicant's attendance at South Dade Middle School).

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 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.