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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: OAKLAND PARK, FL

Date: SEP 16 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.

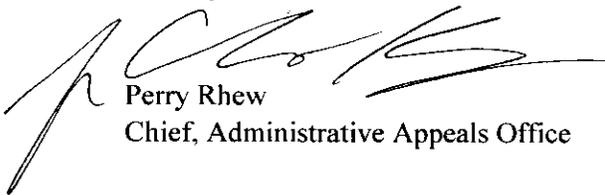
ON BEHALF OF APPLICANT:

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 was denied by the Field Office Director, Oakland Park, Florida. 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 [REDACTED] in Jamaica. The applicant's parents are [REDACTED]. The applicant's mother became a U.S. citizen upon her naturalization on May 15, 2001, when the applicant was 15 years old. The applicant was admitted to the United States as a lawful permanent resident on July 26, 1998, when she was 12 years old. The applicant's father is not a U.S. citizen. The applicant's parents were not married to each other. The applicant presently seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The field office director determined that the applicant did not automatically acquire U.S. citizenship through her mother because she was not residing in her legal and physical custody. The director noted that the applicant immigrated to the United States on the basis of a petition filed by her father and step-mother, and indicated at the time that she would be residing with them. The application was accordingly denied.

On appeal, the applicant submits school and medical records and other documentation in support of her claim that she was residing with her mother. *See Documents Accompanying Form I-290B, Notice of Appeal to the AAO.*

The applicable law for derivative citizenship purposes is "the law in effect at the time the critical events giving rise to eligibility occurred." *See Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005). Section 320 of the Act, as amended by the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), provides for automatic acquisition of U.S. citizenship upon the fulfillment of certain conditions prior to a child's eighteenth birthday. The CCA, which took effect on February 27, 2001, is not retroactive, and applies only to persons who were not yet 18 years old as of February 27, 2001. Because the applicant was under the age of 18 on February 27, 2001, she is eligible for the benefits of the amended Act. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

Section 320 of the Act, as amended, 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 shows that the applicant was born out of wedlock. An alien child who was born out of wedlock and has not been legitimated is eligible for derivative citizenship when the mother of such a child becomes a naturalized citizen.¹ Accordingly, the AAO must first determine if the applicant was legitimated under the law of the applicant's or her father's residence or domicile. Jamaican law requires the marriage of the applicant's parents to establish legitimation. *See Matter of Hines*, 24 I&N Dec. 544 (BIA 2008). The applicant was not legitimated under the law of Jamaica because her parents were never married to each other. Marriage of the natural parents is also required for legitimation in the State of Florida. *See Florida Statutes* §742.091.² The applicant therefore was not legitimated by her father and may derive U.S. citizenship solely through her mother.

The question remains, however, whether the applicant can establish that she was residing in her mother's legal and physical custody prior to her eighteenth birthday. Legal custody vests by virtue of "either a natural right or a court decree". *See Matter of Harris*, 15 I&N Dec. 39, 41 (BIA 1970). The regulations provide that legal custody will be presumed in the case of a biological child born out of wedlock who currently resides with the natural parent. *See* 8 C.F.R. § 320.1 (defining "legal custody"). The Act defines the term "residence" as "the place of general abode . . . [the] 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 contains school, medical, tax, and other evidence establishing that the applicant resided with her mother, in her mother's custody, prior to her eighteenth birthday. Specifically, the AAO notes that the address in the applicant's school records conforms to the applicant's mother's address, and that the applicant's mother was listed as the custodial parent in child support documents, and that she appears as the responsible party in the applicant's medical records.

In addition, the record contains a copy of the applicant's U.S. passport. In *Matter of Villanueva*, 19 I&N Dec. 101 (BIA 1984), the Board of Immigration Appeals (Board) held that a valid U.S. passport is conclusive proof of U.S. citizenship. Specifically, the Board held in *Matter of Villanueva* that:

¹ *See* U.S. Citizenship and Immigration Services, *Eligibility of Children Born Out of Wedlock for Derivative Citizenship*, Memorandum to Regional Directors (Sept. 26, 2003)

² The record contains a child support order pertaining to the applicant which includes a stipulation of paternity, but notes that the order is dated March 2, 2004 (after the applicant's eighteenth birthday). Moreover, pursuant to Florida Statutes § 742.108, acknowledgment by a father does not constitute legitimation under Florida law.

unless void on its face, a valid United States passport issued to an individual as a citizen of the United States is not subject to collateral attack in administrative immigration proceedings but constitutes conclusive proof of such person's United States citizenship.

The burden of proof in these proceedings is on the claimant to establish the claimed citizenship by a preponderance of the evidence. *See* Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 320.3(b)(1). The applicant has met her burden of proof, and her appeal will be sustained. The matter will be returned to the Oakland Park Field Office for issuance of a certificate of citizenship.

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