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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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FILE:

Office: PHILADELPHIA, PA Date:

FEB 02 2011

IN RE:

Applicant:

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on February 6, 1987 in the Dominican Republic. The applicant was admitted to the United States as a lawful permanent resident on June 14, 2000, when she was 13 years old. The applicant's father became a U.S. citizen upon his naturalization on March 29, 2006, when the applicant was 19 years old. The applicant's parents were divorced 1996. The applicant's eighteenth birthday was on February 6, 2005. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The field office director denied the application upon finding that the applicant was not in her father's legal custody following her parents' divorce. On appeal, the applicant maintains that her mother ceded legal custody to her father prior to her immigrating to the United States. See Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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). The applicant was born in 1987. She was under 18 years old on the effective date of the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000) (CCA). Therefore, section 320 of the Act, as amended by the CCA, is applicable to her case.

Section 320 of the Act provides, 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 applicant was admitted to the United States as a lawful permanent resident prior to her eighteenth birthday. Her father naturalized in 2006, when the applicant was 19 years old. The

applicant's mother is not a U.S. citizen. The applicant did not automatically acquire U.S. citizenship because she was over the age of 18 when her father naturalized.¹

The applicant bears the burden of proof in these proceedings to establish the claimed citizenship. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 320.2(a). The applicant has failed to demonstrate her eligibility for citizenship under section 320 or any other provision of the Act. Her appeal will therefore be dismissed. This decision is rendered without prejudice to the filing of a naturalization application should the applicant meet the other requirements for naturalization set forth in section 316 of the Act, 8 U.S.C. § 1427.

ORDER: The appeal is dismissed.

¹ Whether the applicant was residing in her father's legal and physical custody is therefore not at issue in this case.