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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

E2



FILE: [Redacted] Office: ORLANDO, FL Date: FEB 02 2011

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.

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, Orlando, Florida, and is now before the Administrative Appeals Office (AAO) on appeal.¹ The appeal will be dismissed.

The record reflects that the applicant was born on March 9, 1991 in Pakistan. The applicant was admitted to the United States as a lawful permanent resident on July 20, 2003, when she was 12 years old. The applicant's mother became a U.S. citizen upon her naturalization on January 22, 2009, when the applicant was 17 years old. The applicant eighteenth birthday was on March 9, 2009. 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 due to abandonment finding that the applicant had failed to provide evidence that was requested within the allotted time. On appeal, the applicant submits two bank statements, a cable bill, a student schedule, and copies of her and her parents' driver's licenses in support of her claim that she is residing with her parents.

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."

The applicant was born in 1991. 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 and her mother naturalized prior to the applicant's eighteenth birthday. At issue in this case is whether the

¹ The AAO notes that the Orlando Field Office Director issued a Notice of Certification on November 29, 2010. The issuance of a Notice of Certification is not required to forward an appeal to the AAO. See 8 C.F.R. § 103.3(a)(2)(iv). The regulations governing certifications are found at 8 C.F.R. § 103.4.

applicant was residing in the United States in her mother's legal and physical custody prior to March 9, 2009 (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 who currently resides with both natural parents (who are married to each other, living in marital union, and not separated). *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 Form N-600, Application for Certificate of Citizenship, indicates that the applicant and her parents reside at the same address. The applicant's and her mother's driver's licenses issued in 2008 and 2006, indicate that they reside at the same address. Nevertheless, the applicant's father's driver's license (issued in December 2009), as well as the bank, cable and student records submitted by the applicant on appeal relate to dates after the applicant's eighteenth birthday and are therefore irrelevant. After numerous opportunities to do so, the applicant has failed to submit evidence to demonstrate that she was residing in her mother's physical custody prior to her eighteenth birthday.

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 meet her burden and her appeal will therefore be dismissed. This decision is rendered without prejudice to the filing of a motion to reopen in accordance to 8 C.F.R. § 103.5 or 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.