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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:

Office: NEWARK, NEW JERSEY

Date:

FEB 23 2011

IN RE:

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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Newark, New Jersey, 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 The decision of the director will be withdrawn and the appeal will be sustained.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 Venezuela on September 7, 1992, to unmarried parents [REDACTED]. The applicant's mother became a U.S. citizen upon her naturalization on March 5, 2010. The applicant's father is not a citizen of the United States. The applicant was admitted to the United States as a lawful permanent resident on March 29, 2001. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship from her mother pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The director denied the application because the applicant failed to attend an interview and respond to the director's request for evidence. On appeal, the applicant's mother states that she did not receive notice of the scheduled interview, and she submits copies of the requested documents.

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 met all of the requirements set forth in sections 101(c) and 320(a) of the Act before her eighteenth birthday. First, the applicant's birth certificate indicates that she was recognized by her father on October 23, 1995, when she was three years old. Because the applicant's paternity was established by legitimation in accordance with the laws of Venezuela, she meets the definition of "child" in section 101(c) of the Act.

Second, the applicant has been residing in the United States pursuant to a lawful admission for permanent residence since March 29, 2001, when she was eight years old. Third, the applicant's mother became a citizen of the United States by naturalization on March 5, 2010, when the applicant was 17 years old.

Fourth, given the evidence of the applicant's residence with her biological U.S. citizen mother 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 her mother's address); *Immigrant Visa and Alien Registration Form* (same); *Tax Returns* (listing the applicant as her mother's dependent); *School Records for Genesis Betancourt* (listing the applicant's mother as her parent and indicating current school attendance in Palisades Park, New Jersey).

The applicant bears the burden of proof to establish her 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 Newark Field Office for issuance of a certificate of citizenship.