

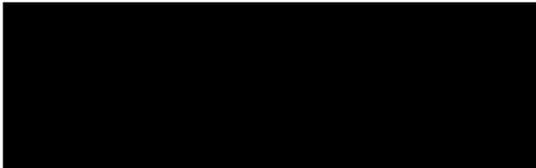
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:



Office: CHICAGO, IL

Date:

JAN 06 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:



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, Chicago, Illinois. 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 December 17, 1991 in Russia. The applicant claims that he was adopted by [REDACTED]. The applicant's adoptive father is a native-born U.S. citizen. His adoptive mother became a U.S. citizen upon her naturalization in 1996. The applicant's adoptive parents were divorced in 2003. The applicant obtained a "Judgment of Re-Adoption" on May 5, 2009 in the State of Illinois. The applicant was admitted to the United States on April 5, 1997, as an orphan coming to the United States for adoption. The applicant presently seeks a certificate of citizenship claiming that he acquired U.S. citizenship through his adoptive mother.

The field office director determined that the applicant did not acquire U.S. citizenship because he was not adopted while under the age of 16 as is required by 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431. The application was accordingly denied.

On appeal, the applicant, through counsel, maintains that he was adopted in Russia in 1997 prior to immigrating to the United States or, alternatively, that his adoption was recognized in his parents' divorce judgment or his "Judgment of Re-Adoption" entered on May 14, 2009. See Brief in Support of Form I-290B Notice of Appeal.

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 1991. Therefore, 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), is applicable to his case.

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.

- (b) Subsection (a) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

Section 101(b)(1) of the Act, 8 U.S.C. § 1101(b)(1), states, in pertinent part, that the term “child” means an unmarried person under twenty-one years of age who is-

(E)(i) a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years . . .

(F)(i) a child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 201(b) of this title, who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents . . . who has been adopted abroad by a United States citizen and spouse jointly . . . or who is coming to the United States for adoption by a United States citizen and spouse jointly

The regulation at 8 C.F.R. § 320.1 provides that the term “adopted” means

adopted pursuant to a full, final and complete adoption. If a foreign adoption of an orphan was not full and final, was defective, or the unmarried U.S. citizen parent or U.S. citizen parent and spouse jointly did not see and observe the child in person prior to or during the foreign adoption proceedings, the child is not considered to have been fully, finally and completely adopted and must be readopted in the United States. Readoption requirements may be waived if the state of residence of the United States citizen parent(s) recognizes the foreign adoption as full and final under that state’s adoption laws.

The record shows that the applicant was “adopted” in Russia in 1997 and “re-adopted” in Illinois in 2009. The applicant was admitted to the United States as an orphan coming to the United States for adoption. Nevertheless, the Illinois “Judgment of Re-Adoption” provides, in relevant part, that the adoption proceedings in Russia in 1997 “are in comport with Illinois law . . . and deserve [] the full benefits of comity.” *See* 2009 Judgment of Re-Adoption. The regulation at 8 C.F.R. § 320.1, *supra*, specifically provides that readoption requirements may be waived where the state of the parent’s residence recognizes the foreign adoption as full and final. The AAO finds that the Illinois Judgment of Re-Adoption is a recognition of the full and final nature of the applicant’s 1997 Russian adoption. Therefore, the applicant can establish that he was adopted prior to his sixteenth birthday.

The question remains whether the applicant can establish that he is in his mother’s legal and physical custody. The applicant’s parents’ divorce judgment grants both parents joint legal custody over the applicant. The regulation at 8 C.F.R. § 320.1 provides that “a U.S. citizen parent who has been

awarded 'joint custody' [is considered] to have legal custody of a child." *See also* 8 C.F.R. § 320.1 (defining "joint custody"). The applicant's parents' divorce judgment grants physical custody of the applicant to his mother. The record indicates that applicant resided with his mother in Illinois. Thus, the applicant has established that he was in his mother's legal and physical custody.

The burden of proof is on the applicant to establish his claimed citizenship by a preponderance of the evidence. *See* Section 341 of the Act, 8 U.S.C. § 1452; *see also* 8 C.F.R. §§ 320.3(b)(1) and 341.2(c). The applicant has met his burden of proof, and his appeal will be sustained. The matter will be returned to the Chicago Field Office for issuance of the certificate of citizenship

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