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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

[redacted]

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Date: JUN 08 2011 Office: NEWARK, NJ File: [redacted]

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:

[redacted]

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, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on November 22, 1996 in India. She was admitted to the United States as a lawful permanent resident on February 9, 2004. The applicant's father and adoptive mother became U.S. citizen upon their naturalizations on April 15, 2010. 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 residing in the United States. Specifically, the director noted that the applicant was residing in India with her parents and therefore could not fulfill the requirement for automatic acquisition of U.S. citizenship in section 320(a)(3) of the Act, as amended by the Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000).

On appeal, the applicant, through counsel, maintains that she was residing in the United States in her parents' legal and physical custody after obtaining lawful permanent residence. *See* Applicant's Appeal Brief. Counsel states that the applicant and her parents moved abroad upon her father's offer of employment. *Id.* Further, he maintains that the applicant's father's is on a temporary assignment in India. *Id.* He explains that the applicant resided with her parents in the United States since 2002. *Id.* Lastly, counsel notes that the applicant has been granted a U.S. passport. *Id.*

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The applicable law for 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 1996. She was under 18 years old on the effective date of the CCA, section 320 of the Act, as amended by the CCA, is therefore 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 satisfied the requirements for derivative citizenship set forth in former section 321(a) of the Act as of the date of her parents' naturalizations in April 2010. Specifically, when her parents' naturalized, the applicant was under eighteen years of age and was residing in the United States as a lawful permanent resident in her parents' legal and physical custody. The applicant was admitted to the United States as a lawful permanent resident on February 9, 2004. Her father was offered employment abroad and the family temporarily relocated to India in November 2010. Although the applicant and her parents are not currently residing in the United States, the evidence in the record establishes that the family was residing in the United States when "the critical events giving rise to eligibility occurred." *See Minasyan, supra.* Therefore, the applicant automatically acquired U.S. citizenship upon her parents' naturalization in April 2010.

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:

> 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 Newark Field Office 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.