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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 20 2011 Office: DENVER, CO File: [redacted]

IN RE: [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, Denver, Colorado, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Laos on April 11, 1984. Her parents, were divorced in 1994. The applicant's mother became a U.S. citizen upon her naturalization on November 3, 2000. The applicant was admitted to the United States as a lawful permanent resident on July 30, 2001. The applicant's eighteenth birthday was on April 11, 2002. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship through her mother pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The director determined that the applicant was ineligible for a certificate of citizenship because she could not establish that she was in her mother's legal and physical custody as required by section 320(a)(3) of the Act. *See Decision of the Field Office Director*. The application was denied accordingly. *Id.* On appeal, the applicant submits her marriage certificate and a document entitled "Contract," dated March 25, 2011, purporting to be a transfer of custody from the applicant's father to her mother.

Section 320 of the Act, as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (CCA), applies to this case because the applicant was not yet 18 years old as of the February 27, 2001 effective date of the CCA. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 156 (BIA 2001) (en banc).

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 applicant's eighteenth birthday was in 2002. She has established that she was admitted to the United States as a lawful permanent resident and that her mother naturalized prior to her eighteenth birthday. However, the applicant's parents' divorce decree, entered in 1994, grants custody of the couple's children to the applicant's father. The AAO notes that the document does not list the applicant's name. The "Contract" dated March 25, 2011 recently submitted by the applicant is not evidence of a legal custody award and is dated after the applicant's eighteenth birthday.

The regulations provide that legal custody "refers to the responsibility for and authority over a child." *See* 8 C.F.R. § 320.1 (defining "legal custody"). Under the regulation, legal custody is presumed "[i]n the case of a child of divorced or legally separated parents . . . where there has been an award of primary care, control, and maintenance of a minor child to a parent by a court of law or other appropriate government entity pursuant to the laws of the state or country of residence." As stated previously, the applicant's parents' divorce decree contains a custody award to the applicant's father, not her mother.

The regulation at 8 C.F.R. § 320.1 further provides, however, that "[t]here may be other factual circumstances under which [USCIS] will find the U.S. citizen parent to have legal custody for purposes of the CCA." The applicant has submitted no other evidence to establish that she was in her mother's legal and physical custody prior to her eighteenth birthday.

"There must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." *Fedorenko v United States*, 449 U.S. 490, 506 (1981). The applicant must meet her burden of proof by establishing the claimed citizenship by a preponderance of the evidence. 8 C.F.R. § 320.3. Here, the applicant has not met this burden. Accordingly, the applicant is not eligible for a certificate of citizenship under section 320(a) of the Act, and the appeal will be dismissed.

ORDER: The appeal is dismissed.