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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: JACKSONVILLE, FL 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, Jacksonville, Florida, 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 Brazil on December 30, 1992, to The applicant's father's name is not listed in her birth certificate. The applicant's mother was married to in New York on June 30, 2004. The applicant was adopted by , a native-born U.S. citizen, in Brazil on May 25, 2010, when she was 17 years old. The applicant was admitted to the United States as a lawful permanent resident on September 14, 2009, when she was 16 years old. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship from her adoptive father pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The director denied the application upon finding that the applicant had not established that she was in her adoptive father's legal custody for at least two years prior to filing her application. *See Decision of the Director*, dated Jan. 6, 2011. On appeal, the applicant maintains that she was in her adoptive father's custody since his marriage to her mother in 2004. *See Form I-290B, Notice of Appeal*, filed Feb. 4, 2011. The applicant further states that she began residing with her adoptive father in 2003 and that her adoption proceeding was initiated in 2008. *Id.*[1]

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Because the applicant was born abroad, she is presumed to be an alien and bears the burden of establishing her claim to U.S. citizenship by a preponderance of credible evidence. *See Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008).

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 appeal 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.

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[1] On appeal, the applicant requested an opportunity "for a personal face to face appointment." *See* Letter submitted on February 24, 2011. The regulation at 8 C.F.R. § 103.3(b) provides that the affected party must explain in writing why oral argument is necessary. USCIS has the sole authority to grant or deny a request for oral argument and will grant such argument only in cases that involve unique factors or issues of law that cannot be adequately addressed in writing. In this case, no cause for oral argument is shown. Consequently, the request is denied.

(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.

Section 320(b) of the Act, 8 U.S.C. § 1431(b), provides that the automatic acquisition of U.S. citizenship under section 320(a) of the Act "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)."

Under section 101(b)(1) of the Act, there are three subsections that apply to adopted children: subsections (E), (F) and (G). 8 U.S.C. § 1101(b)(1)(E), (F), (G). Under subsection (E)(i), the only subsection potentially applicable in this case, the term "child" refers to "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." Section 101(b)(1)(E)(i) of the Act.

The applicant was adopted on May 25, 2010, when she was 17 years old. She therefore cannot establish that she is a "child" as defined in section 101(b)(1)(E)(i) of the Act which requires that adoption to take place prior to the child's sixteenth birthday.[2] Consequently, the applicant did not automatically acquire U.S. citizenship as an adoptive child under section 320(b) of the Act.[3]

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 of the Act, and the appeal will be dismissed.

ORDER: The appeal is dismissed.

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[2] Because the applicant was not adopted prior to the age of 16 as required, the AAO need not address the additional two-year legal custody requirement.

[3] The Board of Immigration Appeals has held that section 320(a) of the Act does not permit an individual to derive U.S. citizenship through a non-adoptive stepparent. *Matter of Guzman-Gomez*, 24 I&N Dec. 824, 829 (BIA 2009).