

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY

E2

FILE: [REDACTED] Office: NEW YORK, NEW YORK

Date: MAR 07 2011

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:

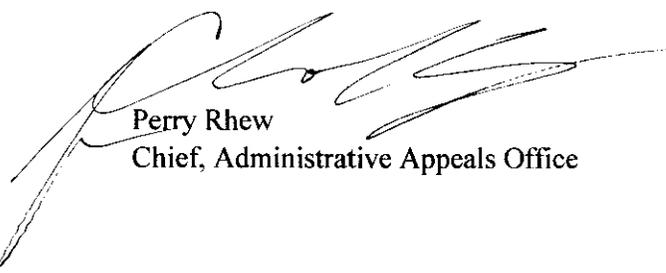
SELF-REPRESENTED

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 District Director, New York, New York. On appeal, the Administrative Appeals Office (AAO) remanded the matter for further action. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The decision of the director will be affirmed and the application will be denied.

The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship from her father pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431. The director determined that the applicant did not acquire U.S. citizenship because she was not in her father's legal custody after her parents' divorce. On appeal, the AAO concurred with the director's determination. Because the record contained a copy of the applicant's U.S. passport, the AAO remanded the matter to the director to request the U.S. Department of State to review and determine whether to revoke the passport. On November 24, 2010, the U.S. Department of State informed the applicant that her passport had been revoked because it was issued in error. On December 1, 2010, the director determined that the application should remain denied, and certified the decision to the AAO for review.

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. In the case of divorced parents:

a U.S. citizen parent [will be found] to have legal custody of a child, for the purpose of the CCA, 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. The Service will consider a U.S. citizen parent who has been awarded "joint custody," to have legal custody of a child. There may be other factual circumstances under which the Service will find the U.S. citizen parent to have legal custody for purposes of the CCA.

Id.

Here, the applicant's parents' divorce decree awards legal custody of the applicant to her mother. The applicant's mother's voluntary transfer of guardianship to the applicant's father on June 9, 2008,

is not an award of custody by a court of law or other appropriate government entity pursuant to law. *See id.* Accordingly, the applicant has not established that she resided in the United States in her father's legal custody before her eighteenth birthday. *See* Section 320(a)(3) of the Act.

On May 11, 2010, U.S. Citizenship and Immigration Services received from the applicant an attested affidavit issued by the Peace Court of the Second Circuit of the National District of the Dominican Republic purporting to show that the applicant's father has had custody over the applicant since April 14, 2009. Because this document was issued after the applicant turned 18 years old on November 15, 2008, it does not establish that the applicant was in her father's legal custody before her eighteenth birthday.

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 not 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 December 1, 2010 decision of the director will be affirmed, and the application will remain denied.

ORDER: The director's decision of December 1, 2010 is affirmed. The application is denied.