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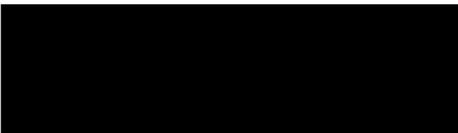
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

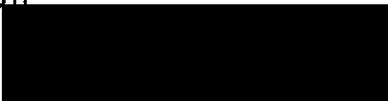
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Date: **OCT 25 2011**

Office: EL PASO, TX

File: 

IN RE: 

APPLICATION: Application for Certificate of Citizenship under section 320 of the Immigration and Nationality Act; 8 U.S.C. § 1431

ON BEHALF OF APPLICANT:

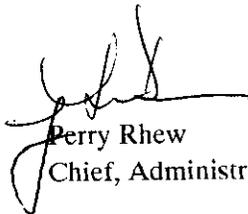


INSTRUCTIONS:

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.

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 for Certificate of Citizenship (Form N-600) was denied by the District Director, El Paso, Texas, 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 Mexico on January 22, 1992. On February 15, 2009, the applicant was adopted by her U.S. citizen step-father. *See Order Terminating Parental Rights and Granting Adoption of Stepchildren*, filed February 15, 2009. The applicant seeks a Certificate of Citizenship 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 meet the requirements for issuance of a certificate of citizenship under section 320 of the Act because she did not meet the two-year legal custody requirement cited at section 101(b)(1)(E) of the Act prior to attaining the age of 18 years. The application was denied accordingly. *See District Director's Decision*, dated June 1, 2011. On appeal, counsel states that the applicant has been in her step-father's physical custody since 2007, a period of more than two years prior to the applicant attaining the age of 18 years and contends that the applicant therefore derived U.S. citizenship through her step-father.

Section 320 of the Act applies to children born outside of the United States who are residing permanently in the United States, and provides 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), defines the term "child" in relevant part as:

(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; or

(ii) subject to the same proviso as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) . . . ; (II) was adopted by the adoptive parent or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), except that the child was adopted while under the age of 18 years[.]

A Texas court awarded legal custody to the applicant's step-father on February 15, 2009, as evidenced by the adoption decree.¹ Therefore, the applicant was not in her step-father's legal custody² for the required two years under section 101(b)(1)(E)(ii) of the Act until February 15, 2011. As the applicant was already 19 years old on February 15, 2011, she was unable to meet the age requirement at section 320(a)(2) of the Act.

On appeal, counsel emphasizes that the applicant had been living with her step-father since 2007; however, residence and legal custody are two distinct determinations under section 101(b)(1)(E)(i) of the Act. *See* 8 C.F.R. § 204.2(d)(2)(vii)(A), (B). Even if the applicant could establish that she had resided with her step-father for at least two years prior to reaching the age of 18, she has failed to demonstrate that she was in his legal custody. Accordingly, the applicant cannot derive citizenship through her step-father under section 320 of the Act because she did not fulfill all of the requirements to derive U.S. citizenship prior to her 18th birthday.

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. The application remains denied.

¹ *Order Terminating Parental Rights and Granting Adoption of Stepchildren*, District Court of El Paso County, Texas, Case No. 2008CM6075.

² According to the regulation at 8 C.F.R. § 204.2(d)(2)(vii)(A), *legal custody* means:

The assumption of responsibility for a minor by an adult under the laws of the state and under the order or approval of a court of law or other appropriate government entity. This provision requires that a legal process involving the courts or other recognized government entity take place. If the adopting parent was granted legal custody by the court or recognized governmental entity prior to the adoption, that period may be counted toward fulfillment of the two-year legal custody requirement. However, if custody was not granted prior to the adoption, the adoption decree shall be deemed to mark the commencement of legal custody. An informal custodial or guardianship document, such as a sworn affidavit signed before a notary public, is insufficient for this purpose.