



U.S. Citizenship
and Immigration
Services

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Date: **SEP 27 2011**

Office: KENDALL FIELD OFFICE

FILE: 

IN RE:

Applicant: 

APPLICATION:

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

ON BEHALF OF APPLICANT:

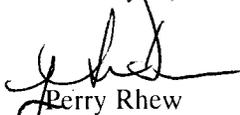


INSTRUCTIONS:

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 was denied by the Acting Director of the Kendall Field Office, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on September 17, 1986 in Colombia. The applicant was admitted to the United States as a lawful permanent resident on April 29, 2002. The applicant's father is a native-born U.S. citizen. Her parents were married in 1985, and divorced in 2001. The applicant seeks a certificate of citizenship claiming that she automatically acquired U.S. citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The acting field office director denied the application finding that the applicant was not in her father's physical custody as required by section 320 of the Act.

On appeal, the applicant, through counsel, maintains that her father was awarded shared parental responsibility upon her parents' divorce and that she therefore can acquire U.S. citizenship through him under section 320 of the Act. *See* Statement on Form I-290B, Notice of Appeal to the AAO.

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The applicable law for derivative 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 under the age of 18 on the effective date of the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000). Section 320 of the Act, as amended by the CCA, is therefore applicable to this case.¹

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 is the child of a U.S. citizen and was admitted to the United States as a lawful permanent resident prior to her eighteenth birthday. Her parents were divorced in 2001, with shared parental responsibility awarded to both parents but primary physical residence awarded to

¹ The AAO notes that the applicant does not claim eligibility for U.S. citizenship under section 301 of the Act, 8 U.S.C. § 1401, which, in relevant part, requires the applicant to prove her father's physical presence in the United States prior to her birth.

the applicant's mother. The applicant can therefore establish that she is in her father's legal custody, but the evidence in the record indicates that she is not residing with him. *See* Form N-600, Application for Certificate of Citizenship (indicating applicant's address is different from her father's address). There is no evidence in the record indicating that the applicant is in her father's physical custody. The applicant therefore has not established that she is residing in the United States in her father's physical custody.

The applicant bears the burden of proof in these proceedings to establish the claimed citizenship. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 320.2(a). The applicant has failed to demonstrate her eligibility for citizenship under section 320 or any other provision of the Act. Her appeal will therefore be dismissed.

ORDER: The appeal is dismissed.