



U.S. Citizenship  
and Immigration  
Services

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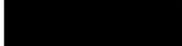
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Date: **SEP 27 2011**

Office: NEW YORK, NY

FILE: 

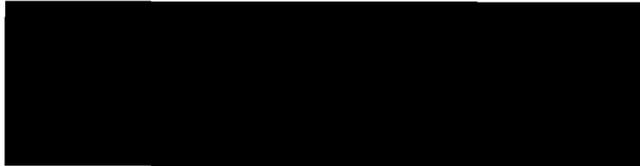
IN RE:

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:

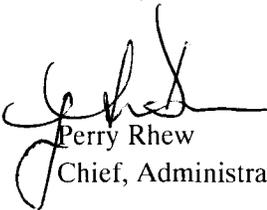


INSTRUCTIONS:

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 District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be remanded for action consistent with this decision.

The record reflects that the applicant was born on [REDACTED] 1989 in Egypt. The applicant's parents are [REDACTED] and [REDACTED]. The applicant's parents divorced in 1992. The applicant's father became a U.S. citizen upon his naturalization on May 24, 2001, when the applicant was 12 years old. The applicant was admitted to the United States as a lawful permanent resident on January 21, 2005, when he was 15 years old. The applicant presently seeks a certificate of citizenship claiming that he acquired U.S. citizenship from his father pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, as amended by the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000).

The field office director denied the application finding that the applicant was not in his father's legal custody following his parents' divorce.<sup>1</sup> On appeal, the applicant maintains that Egyptian law provides for him to choose his custodial parent after the age of 15 and that he was in his father's custody as required by the statute. 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 (9<sup>th</sup> Cir. 2005). The applicant was born in 1989. He was under 18 years old on the effective date of the CCA, section 320 of the Act, as amended by the CCA, is therefore applicable to his case.

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.

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<sup>1</sup> The applicant's previous application for a certificate of citizenship was denied by the director upon finding that the applicant was not in his father's physical custody. The AAO dismissed the applicant's appeal of that denial finding that the applicant had not established that he was in his father's legal custody.

The applicant in this case has established that he was admitted as a lawful permanent resident of the United States and that his father naturalized prior to his eighteenth birthday. The question remains whether the applicant was in his father's legal custody.

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." The record contains a divorce decree indicating that the applicant's parents were divorced in 1992. The decree, however, does not address the question of custody. The applicant, through counsel, maintains that Egyptian law allowed him to choose his custodial parent after his fifteenth birthday. He further states that his mother relinquished her custody when he immigrated to the United States to reside with his father.

The regulation at 8 C.F.R. § 320.1 further provides, however, that "[t]here may be other factual circumstances under which [U.S. Citizenship and Immigration Services (USCIS)] will find the U.S. citizen parent to have legal custody for purposes of the CCA." In this case, the record suggests that the applicant was residing with his mother in Egypt during the relevant time period, not with his father. There are no factual circumstances in the record warranting a finding that the applicant was in his father's legal or physical custody. Accordingly, the applicant did not meet the requirements for automatic acquisition of U.S. citizenship under section 320 of the Act.

The AAO nevertheless notes that the record contains a copy of the applicant's U.S. passport. In *Matter of Villanueva*, 19 I&N Dec. 101 (BIA 1984), the Board of Immigration Appeals (Board) held that a valid U.S. passport is conclusive proof of U.S. citizenship. Specifically, the Board held in *Matter of Villanueva* that:

unless void on its face, a valid United States passport issued to an individual as a citizen of the United States is not subject to collateral attack in administrative immigration proceedings but constitutes conclusive proof of such person's United States citizenship.

The record contains a copy of the applicant's U.S. passport, issued by the U.S. Department of State, Passport Office, on February 25, 2005. Where, as here, the applicant has failed to establish statutory eligibility for U.S. citizenship, a Certificate of Citizenship cannot be issued. The USCIS Adjudicator's Field Manual at § 71.1(e)(1) states:

An unexpired United States passport issued for 5 or 10 years is now considered prima facie evidence of U.S. citizenship. Because it does not provide the actual basis upon which citizenship was acquired or derived, the submission of additional documentation may be required or the passport file may be requested. If after review there are differences or discrepancies between the USCIS information and the Passport Office records which would indicate that the

application should not be approved, no action should be taken until the Passport Office has an opportunity to review and decide whether to revoke the passport.

The matter must therefore be remanded to the director to request that the Passport Office review and decide whether to revoke the applicant's passport. The director shall issue a new decision once the Passport Office's review is completed and, if adverse to the applicant, certify the decision to the AAO for review.

**ORDER:** The matter is remanded to the director for action consistent with this decision. The director shall issue a new decision once the Passport Office's review is completed and, if adverse to the applicant, certify the decision to the AAO for review.