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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: APR 2 4 2012 Office: DENVER, CO 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 PETITIONER:

[redacted]

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 Field Office Director, Denver, Colorado, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on July 23, 1994. She was adopted by on May 5, 2011. The applicant was found to have been neglected by her natural parents and placed in foster care on May 31, 2007. Her natural parents' parental rights were terminated by a court order entered on December 1, 2008. The applicant adjusted her status to that of a lawful permanent resident on November 29, 2010, on the basis of an approved petition for classification as a special immigrant juvenile. The applicant's adoptive parents are native-born U.S. citizens. The applicant resided with them in foster care prior to her adoption. The applicant seeks a certificate of U.S. citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The field office director determined that the applicant did not automatically acquire U.S. citizenship under section 320 of the Act because she had not been in her adoptive parents' legal custody for two years as required by section 101(b) of the Act, 8 U.S.C. § 1101(b). On appeal, the applicant, through counsel, maintains that her adoptive parents were her foster parents and that she has resided with them since 2007.

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, he is presumed to be an alien and bears the burden of establishing his claim to U.S. citizenship by a preponderance of the credible evidence. *See Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008).

The applicable law for acquisition of U.S. citizenship purposes is that in effect at the time the critical events giving rise to eligibility occurred. *Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005); *accord Jordon v. Attorney General*, 424 F.3d 320, 328 (3d Cir. 2005). The applicant was born in 1994 and 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 applicable to this 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.

(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 states, in pertinent part, that the term "child" means an unmarried person under twenty-one years of age who is-

> (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: Provided, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act; or
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> . . .
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> (ii) subject to the same provisos as in clause (i), a child who:
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> > (III) is otherwise described in clause (i), except that the child was adopted while under the age of 18 years;
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> (F)(i) [A] child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 1151(b) of this title, who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents . . . who has been adopted abroad by a United States citizen and spouse jointly . . . or who is coming to the United States for adoption by a United States citizen and spouse jointly . . . ;or,
>
> . . .
>
> (ii) subject to the same provisos as in clause (i), a child who:
>
> > (III) is otherwise described in clause (i), except that the child is under the age of 18 at the time a petition is filed in his or her behalf to accord a classification as an immediate relative under section 201(b);
>
> . . .

Section 101(c) of the Act states that:

> (1) The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere, and, except as otherwise provided in sections 320, and 321 of title III, a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of 16 years (except to the extent that the child is described in subparagraph (E)(ii) or (F)(ii) of subsection (b)(1)), and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

The regulation, at 8 C.F.R. § 320.1, defines "adopted" as "adopted pursuant to a full, final and complete adoption."

The regulation, at 8 C.F.R. § 320.1, further provides "[i]n the case of an adopted child, a determination that a U.S. citizen parent has legal custody will be based on the existence of a final adoption decree."

The applicant's adoption decree is dated May 5, 2011. Pursuant to the regulations, supra, the applicant's adoptive parents' legal custody of the applicant began on May 5, 2011. The applicant was previously in the temporary custody of the State of Connecticut, as evidence by the dependency order submitted in support of the applicant's special immigrant juvenile petition. The AAO further notes that the applicant's natural parents' parental rights were not terminated until December 1, 2008.

The applicant, through counsel, citing to *Matter of Patel*, 17 I&N Dec. 414 (BIA 1988) and *Matter of Cuello*, 20 I&N Dec. 94 (BIA 1989), maintains that the residence requirement in section 101(b)(1)(E) of the Act can be fulfilled prior to or after an adoption.

The applicant also cites to the regulations at 8 C.F.R. §204.2(d)(2)(vii)(A-C). Those regulations state, in pertinent part, that:

> (A) [i]f the adopting parent was granted legal custody by the court . . . 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.

Although the applicant may fulfill the residence requirement in section 101(b)(1)(E) by establishing residence prior to her adoption, she cannot establish that she was in her adoptive parents legal custody during that time. The applicant was not in the legal custody of her adoptive parents until her adoption was final on May 5, 2011.

Because the applicant did not reside in her adoptive parents' legal custody for two years, she did not satisfy the requirements of section 320(b) of the Act and did not automatically acquire U.S. citizenship upon her admission as a lawful permanent resident.

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.