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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

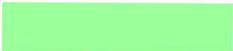


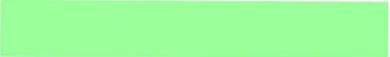
U.S. Citizenship
and Immigration
Services



DATE: **MAY 10 2013**

OFFICE: OAKLAND PARK, FL

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:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Form N-600, Application for Certificate of Citizenship (Form N-600) was denied by the Field Office Director, Oakland Park, Florida (the director), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born in Haiti on March 31, 1992 to unwed parents. The applicant's mother became a naturalized U.S. citizen on November 6, 2007, when the applicant was 15 years old. The record contains no information to establish that the applicant's father is a U.S. citizen. The applicant was admitted into the United States as a lawful permanent resident on October 17, 2000, when she was 8 years old. She seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, based on the claim that she derived U.S. citizenship through her mother.

In a decision dated September 27, 2012, the director determined the applicant had failed to establish that she resided in her mother's physical custody at the time of her mother's naturalization, and prior to the applicant's 18th birthday as required by section 320 of the Act. The application was denied accordingly.

The applicant indicates on appeal that she has lived in the physical and legal custody of her mother since coming to the United States; that although her mother sent her to live in Florida, she visited her mother numerous times in New York and resided with her mother during those visits; and that the Florida college she attends considers her to be a resident of New York because her mother does not have a Florida State identification card. The applicant submits two affidavits and general airline receipt information to support her assertions. The record also contains a copy of the applicant's U.S. passport, and a letter from the applicant indicating that her twin brother has obtained a certificate of citizenship.

The entire record was reviewed and considered in rendering a decision on the appeal.

Section 320 of the Act provides:

- (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.

Under the Act, “[t]he term ‘residence’ means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent.” Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33).

Federal income tax information contained in the record reflects that the applicant’s mother resided and worked in Brooklyn, New York in 2006 and 2007. The applicant is listed as a dependent on her mother’s 2007 income tax form; however, the record also contains high school identification and diploma evidence reflecting that the applicant attended high school in Florida between 2006 and June 2010. The applicant submits no evidence to demonstrate that she resided with her mother in New York in 2007, or any time thereafter.

The submission of 2010 and 2011 transcripts reflecting that a Florida-based college considers the applicant to be a non-Florida resident for tuition purposes fails to establish the applicant lived in the physical custody of her mother between November 2007, when her mother became a naturalized U.S. citizen and March 31, 2010, when the applicant turned 18 years old. General airline receipt policy information submitted on appeal also fails to address or establish that the applicant lived with her mother in New York during the requisite time period. In addition, the affidavits submitted on appeal lack evidentiary value as they are unsigned and contain no identification documentation to establish the identity of the affiants. Furthermore, it is noted that the information contained in the affidavits reflects that the applicant’s mother lived in New York and that the applicant lived and attended school in Florida.

The applicant also asserts that the Service has issued her twin brother, [REDACTED], a certificate of citizenship; however, no evidence was submitted to establish the asserted relationship. Moreover, it must be emphasized that each petition filing is a separate proceeding with a separate record. In making a determination of statutory eligibility, U.S. Citizenship and Immigration Services (USCIS) is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

The AAO notes further that the record contains a copy of the applicant’s expired U.S. passport. In *Matter of Villanueva*, 19 I&N Dec. 101, 103 (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 that:

[U]nless 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.

In the present matter the applicant’s passport is expired, and the record contains no evidence that the applicant has been issued a new and valid passport. The AAO finds further that where, as here, the applicant has failed to establish statutory eligibility for U.S. citizenship, a certificate of citizenship cannot be issued. *See Fedorenko v. U.S.*, 449 U.S. 490, 506 (1981) (stating that strict compliance with statutory prerequisites is required to acquire citizenship.)

The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. The applicant failed to establish by a preponderance of the evidence that she resided in the physical custody of her mother

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as required by section 320 of the Act. Accordingly, the applicant is not eligible for a certificate of citizenship and the appeal will be dismissed.¹

ORDER: The appeal is dismissed.

¹ This dismissal is without prejudice to the future filing of an Application for Naturalization (Form N-400).