

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:

Office: CHICAGO, IL

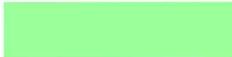
FILE:



MAY 23 2013

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 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Chicago, Illinois, 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 November 4, 1993 in India. The applicant was adopted on July 15, 2008 by [REDACTED]. The applicant's adoptive parents were married in 1991. They became U.S. citizens upon their naturalizations on April 8, 1993 and February 17, 1998, respectively. The applicant was admitted to the United States as a non-immigrant on May 28, 2007, and adjusted her status to that of a lawful permanent resident on January 25, 2010. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship upon her admission to the United States as a lawful permanent resident 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 had not been in her adoptive parents' legal custody for the required two year period such that she could acquire U.S. citizenship. See *Decision of the Field Office Director*, dated May 1, 2012. Citing to the regulations at 8 C.F.R. §§ 204.2(d)(vii)(A) and 320.1(2), the director concluded that legal custody of the applicant began on her adoption date and that her application for adjustment of status to lawful permanent resident was granted in error.

On appeal, the applicant, through counsel, maintains that she was in her adoptive parents' legal custody as of the date for the required 2-year period prior to obtaining lawful permanent residence. See Appeal Brief. Counsel explains that the applicant was in her adoptive parents' custody as of November 1, 2007, when the Cook County Court issued its Interim Order granting temporary custody of the applicant to her adoptive parents. *Id.*

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 18 years of age on the effective date of the CCA, February 27, 2001. Thus, section 320 of the Act, as amended by the CCA, is applicable to her 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.

The applicant's adopted parents have been U.S. citizens since their naturalizations in 1993 and 1998, respectively. The applicant was adopted on July 15, 2009 and admitted to the United States as a lawful permanent resident on January 25, 2010. The applicant's adopted parents were granted temporary custody of the applicant on November 1, 2007. *See* Cook County Court's Interim Order. The appointment of a Guardian Ad Litem is unrelated to the issue of custody, which is explicitly awarded to the applicant's adopted parents. *Id.*

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 an adopted child . . . based on the existence of a final adoption decree.” The regulation at 8 C.F.R. § 320.1 further provides that “[t]here may be other factual circumstances under which [USCIS] will find the U.S. citizen parent to have legal custody for purposes of the CCA.”

The AAO notes that the applicant was first admitted to the United States on May 8, 2007 as a non-immigrant, accompanied by her natural mother. The applicant's adopted parents, her aunt and uncle, were granted temporary custody of the applicant shortly thereafter. Legal custody and residence occurring prior to or after the adoption will satisfy both requirements, and is counted in the aggregate. *See* 8 C.F.R. § 204.2(d)(2)(vii). Nevertheless, where, as here, a child is adopted by close relatives, and the possibility exists that her adoption was arranged to facilitate her immigration into the United States, competent objective evidence to establish the adoptive parents exercised primary parental control during the two-year residence period is required to establish compliance with section 101(b)(1)(E) of the Act. *See Matter of Marquez*, 20 I&N Dec. 160 (BIA 1990). The only such evidence of the adoptive parent's custody during the two-year period is the Cook County Court's Interim Order. The record does not contain evidence to establish, for example, that the applicant was not also residing with her natural mother, or that the applicant's adoptive parents were primarily responsible for her care and support. The applicant's name is not listed on the adoptive parents' 2007 or 2008 federal income tax returns.

The evidence in the record does not sufficiently establish that the applicant was in her adopted parents' custody for the required two-year period. The applicant therefore did not acquire U.S. citizenship automatically upon her admission to the United States as lawful permanent resident in 2010.

“There must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship.” *Fedorenko v United States*, 449 U.S. 490, 506 (1981). 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 failed to meet this burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.