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U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE: [Redacted] Office: New York

Date: JAN 14 2003

IN RE: Applicant: [Redacted]

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

IN BEHALF OF APPLICANT: [Redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, New York, New York, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The applicant was born on February 15, 1985, in Yemen. The applicant's father, [REDACTED] was born in Yemen in March 1932 and became a naturalized U.S. citizen on November 14, 1990. The applicant's mother, [REDACTED] was born in Yemen in May 1940 and never had a claim to United States citizenship. The applicant's parents married each other on March 7, 1955. The applicant was lawfully admitted for permanent residence on November 15, 1995. The applicant is seeking a certificate of citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1431.

The district director reviewed the record and concluded that the applicant failed to establish that he was residing in the legal and physical custody of the citizen parent. The district director denied the application accordingly.

On appeal, counsel states that the applicant has submitted sufficient documentation to establish that he was residing with the citizen parent in the United States at the time of his interview on January 24, 2002.

Sections 320 and 322 of the Act were amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA benefits all persons who have not yet reached their 18th birthday as of February 27, 2001. The applicant was 16 years old on February 27, 2001. Therefore, he is eligible for the benefits of the CCA.

Section 320(a) of the Act, effective on February 27, 2001, provides, in part, that 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).

The record reflects that the applicant last entered Wingsbridge Heights School on December 12, 1996. He was outside of the U.S. from September 1996 to January 1997, from June 1998 to August 1998,

and from May 1999 to October 1999. He last attended Burroughs Middle School in June 2000. He departed the U.S. in July 2000 and returned in January 2001. He was issued a Learner's Permit on March 16, 2001, using his current address, and had social security deductions for employment in 2001. The application was filed on August 14, 2001.

Service Memorandum HQISD 70/33 dated February 26, 2001, contains implementation instructions for Title I of the CCA for all Service offices. The memorandum states that the Service will determine legal custody based on either the adoption decree or custody order issued pursuant to a divorce or separation agreement. The Service will also presume legal custody under certain factual circumstances. For children admitted as lawful permanent residents prior to February 27, 2001, the Service will presume that the U.S. citizen parent had legal custody, if the child is still living with and in the physical custody of the citizen parent on February 27, 2001.

The applicant's motor vehicle learner's permit was issued on March 16, 2001, shortly after the effective date of the CCA, and it contains the applicant's address, which is the same as his father's address. This is sufficient to establish that the applicant was living with and in the physical custody of the citizen parent on February 27, 2001.

8 C.F.R. 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant has met this burden. Therefore, the appeal will be sustained.

ORDER: The appeal is sustained. The district director's decision is withdrawn, and the application is approved.