

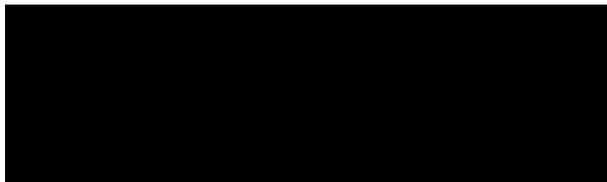
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U.S. Citizenship
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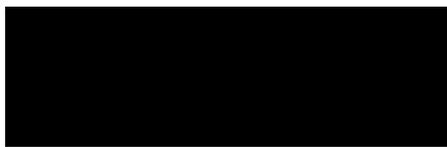
Office: BUFFALO, NEW YORK

Date: SEP 19 2005

IN RE:

APPLICATION: Application for Certificate of Citizenship under Section 321 of the former Immigration and Nationality Act; 8 U.S.C. § 1432.

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Buffalo, New York, and is now before the Administrative Appeals Office (AAO) on a motion to reopen. The motion will be granted and the previous decisions affirmed.

The record reflects that the applicant was born in the Dominican Republic on December 24, 1978. The applicant's mother, [REDACTED] was born in the Dominican Republic. The applicant's father, [REDACTED] was born in the Dominican Republic and became a naturalized United States (U.S.) citizen on April 20, 1996. The record reflects that the applicant's parents were married in the Dominican Republic, and that they obtained a divorce in the Dominican Republic on September 9, 1988. The applicant was admitted into the United States on January 21, 1984 pursuant to a relative petition filed by his father. The applicant seeks a certificate of citizenship under section 321 of the former Immigration and Nationality Act (the Act), 8 U.S.C. § 1432.

The director concluded that the applicant had failed to establish that he resided in the U.S. in the legal custody of his U.S. citizen parent, as required by section 321 of the Act. The N-600 Application for Certificate of Citizenship was denied accordingly. *Decision of Director*, Buffalo District Office, dated September 29, 2004. The applicant appealed the director's decision, and the AAO dismissed the appeal on April 26, 2005. The applicant filed a second N-600 in April 2005, which the director denied. *Decision of the Director*, Buffalo District Office, dated May 16, 2005. The applicant filed the present motion in response to the AAO decision of April 26, 2005.

On motion, the applicant contends that his father had actual and legal custody of him until he turned 21. In support of the motion, the applicant submitted a brief, an affidavit and family chronicle; a copy of his sworn statement taken on October 6, 2003 at the Buffalo Federal Detention Facility; affidavits from his parents; and the brief that was submitted with the applicant's petition for a writ of habeas corpus. On June 13, 2005, the Buffalo District Office received the applicant's motion, in which the applicant indicated that he needed 60 days to submit a brief and/or evidence to the AAO. The AAO has received no additional evidence. The entire record was considered in rendering this decision.

Section 321 of the former Act states in pertinent part that:

- (a) A child born outside of the United States of alien parents . . . becomes a citizen of the United States upon fulfillment of the following conditions:
 - (1) The naturalization of both parents; or
 - (2) The naturalization of the surviving parent if one of the parents is deceased; or
 - (3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if the child was born out of wedlock and the paternity of the child has not been established by legitimation; and if
 - (4) Such naturalization takes place while such child is under the age of eighteen years; and

(5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (1) of this subsection, or the parent naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of eighteen years.

In the present case, the record reflects that the applicant's father became a naturalized U.S. citizen on April 20, 1996, when the applicant was seventeen years old, and that the applicant was residing in the U.S. at that time pursuant to a lawful admission for permanent residence. Accordingly, the applicant has met the requirements of Sections 321(a)(4) and 321(a)(5) of the former Act.

In a decision dated April 26, 2005 regarding the first N-600 filed by the applicant, the AAO concluded:

On September 16, 2003, while the applicant was in custody pending immigration removal proceedings based on criminal convictions, he filed the instant Application for Certificate of Citizenship with the United States Citizenship and Immigration Services (the Service). In support of the application, the applicant submitted a divorce decree for his parents that did not address custody of the children. After the applicant was released from custody, the Service obtained documents that the applicant had submitted to the Immigration Court. The record contains the divorce decree submitted in Immigration Court, which included an attached notation indicating that the applicant's mother stated that page two of the divorce decree provided that custody of the applicant and his siblings was granted to the mother.

The record contains no evidence to establish that the applicant's father obtained an amended divorce decree awarding him legal custody over the applicant. The AAO therefore finds that the applicant has failed to establish that he resided in the legal custody of his U.S. citizen father, as set forth in section 321(a)(3) of the former Act.

The additional evidence submitted by the applicant does not establish that his father had legal custody of the applicant. The applicant contends that the divorce decree is illegible and that is why he insisted in Immigration Court that it not be made part of the record, yet the applicant cited the divorce decree and stated:

However, in the divorce decree even in its illegible state you can make out part two blurred numbered clauses that relate to "custody"; **SECUNDO: SECOND:** Making my mother responsible for daily personal care and granting her personal custody for that purpose. The Spanish words translated mere "custody" into English by whoever wrote the unsigned, undated, uncertified "notation" you refer to in your DECISION AND ORDER is: "Ortoga la guarda personal". This is not an exclusive grant of legal custody to my mother that would exclude my father from legal custody it does not exclude neither. See. Black's Law Book, definition "Parent" for "Father". It is simply defining her responsibility toward the children. **AND, TERCERO: THIRD:** Making my father responsible for daily FINANCIAL support, including Domicile, Education and all other matters and granting him legal custody for that purpose. Therefore, neither parent lost legal custody by means of the divorce decree. If anything this language grants my father LEGAL CUSTODY. (emphasis in original)

The applicant did not submit a copy of the divorce decree, and if he believes it is illegible and not appropriate to cite, it is unclear why he cites it in his motion. If the applicant believes that the divorce decree supports his position, and he is able to read from it, it should have been submitted as evidence. The applicant quoted one Spanish phrase, "Ortoga la garde personal," from the divorce decree and asserted that the fact that his mother was granted "personal custody" of the applicant does not exclude his father from being granted legal custody. The applicant cited no other Spanish language from the decree, but he contends that the decree provided that his father was responsible for daily financial support. The fact that the applicant's father provided financial support does not establish that he was granted legal custody of the applicant. A divorce decree can award custody to one parent and order the non-custodial parent to pay child support. The applicant has not established that the divorce decree awarded legal custody of him to his father, or that legal custody was awarded to both parents.

The record contains an extract of the divorce decree that was mislabeled as the actual divorce decree in the AAO decision of April 26, 2005. Attached to this extract is a notation that reads:

From page two of the divorce decree for [REDACTED] parents [REDACTED] mother [REDACTED] read it to me from her copy on 8/25/2003)

SEGUNDO: Ortoga la garde personal de los menores [REDACTED] y [REDACTED] a la madre demandante por on enir al major interes de los menores;

SECOND: Custody of the minor children [REDACTED] and [REDACTED] is granted to the plaintiff mother [REDACTED] in the best interest of the said children;

The above quoted language indicates that the applicant's mother was awarded legal custody. The divorce decree is the legal document that terminated the marriage and assigned custody of the children. As such, its terms control the determination of who had legal custody of the applicant. The fact that the applicant lived with his father, and that his father may have provided material support, does not establish that the divorce decree granted legal custody of the applicant to his father. Furthermore, the applicant has provided no explanation of why a copy of the divorce decree cannot be submitted as evidence.

In a January 4, 2005 sworn statement that was taken in the Dominican Republic, the applicant's father stated:

That I am the biological father of [REDACTED] whom I have educated, fed and provided with everything necessary, and since the year nineteen hundred eighty eight (1988) when the divorce between his mother [REDACTED] and me took place, up to this date, I have maintained full custody of my son with all its consequences and responsibilities. (emphasis in original)

In a March 23, 2005 affidavit, the applicant's mother stated:

[REDACTED], my former husband has always had legal custody of our son [REDACTED] after the divorce up to the time [REDACTED] attained the age of eighteen years and always fulfilled his financial obligations for the care and support of our son [REDACTED]. This was in keeping with the terms of the aforesaid divorce decree from the date of the divorce in 1988 up to and after [REDACTED] eighteenth birthday.

The care and support [REDACTED] provided throughout that time consisted of financial support for obligations of shelter, food, medical care, school and other appropriate care.

This legal custody agreement between [REDACTED] and myself was by mutual agreement and understanding and is witnessed by provisions of the aforesaid divorce decree. Wherein [REDACTED] was legally, financially, physically responsible for [REDACTED] after the divorce became final and I was responsible for providing personal care as the mother.

The affidavits of the applicant's parents do not establish that the divorce decree granted legal custody of the applicant to his father. The applicant's father stated that he always had "full custody" of the applicant but cited no provisions from the divorce decree. The applicant's mother referred to the "aforesaid divorce decree" but in fact was referring to the abstract, which did not address custody of the children. The statement by the applicant's mother that [REDACTED] was legally, financially, physically responsible for [REDACTED] after the divorce became final and I was responsible for providing personal care as the mother" is not supported by any citation to the divorce decree. As indicated earlier, the applicant's mother read from her copy of the divorce decree, so it is unclear why she does not cite to it in her March 23, 2005 affidavit.

In the director's May 16, 2005 decision denying the applicant's second N-600, the director cited additional documents that appear to indicate that the applicant's father did not have legal custody of the applicant. First, the applicant's father filed a 1040A Federal Income Tax Return for 1992 that identified his address as [REDACTED] New York, New York. The applicant's father filed the return as single and with no dependents. Second, on February 18, 1993, the applicant's father completed, under oath, an I-134 Affidavit of Support in which he listed the same address noted above and indicated that no one was dependent on him for support. Third, on June 9, 1995, the applicant filed an N-400 Application for Naturalization in which he listed several of his children as living at the above address, but no address was provided for the applicant. Each of the above documents contradicts the information provided by the applicant's parents in their affidavits and undermines the applicant's claim that his father had legal custody of him.

Accordingly, the evidence in the record does not establish that the applicant's father had legal custody over the applicant as required by section 321(a)(3) of the former Act.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish citizenship by a preponderance of the evidence. *See also* § 341 of the Act, as amended, 8 U.S.C. § 1452. The applicant failed to establish that he meets the requirements for citizenship as set forth in section 321 of the former Act.

ORDER: The previous decisions of the District Director and the AAO are affirmed.