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U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: MIAMI, FLORIDA

Date:

JAN 09 2006

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:

SELF-REPRESENTED

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born in Nicaragua on July 3, 1984. The applicant's father, [REDACTED] was born in Nicaragua and he became a naturalized U.S. citizen on June 2, 1999, when the applicant was fourteen years old. The applicant's mother, [REDACTED] was born in Nicaragua and she is not a U.S. citizen. The record reflects that the applicant's parents married in Nicaragua on January 21, 1984. They obtained a divorce in Florida on July 9, 1993, when the applicant was nine years old. The applicant was admitted into the U.S. as a lawful permanent resident on January 31, 2001, when she was sixteen years old. She presently seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The district director determined that the applicant's parents' divorce decree awarded custody over the applicant to her paternal grandmother. The application was subsequently denied because the applicant had failed to establish her U.S. citizen father had legal custody over the applicant prior to her eighteenth birthday.

On appeal, the applicant indicates that the legal guardianship provision contained in her parents' divorce decree was amended, and that her father had legal custody over the applicant prior to her eighteenth birthday.

Section 320 of the Act was 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 eighteenth birthday as of February 27, 2001. The applicant was sixteen years old on February 27, 2001. She therefore meets the age requirement for benefits under the CCA.

Section 320 of the Act states 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.

Legal custody vests "[b]y virtue of either a natural right or a court decree". *Matter of Harris*, 15 I&N Dec. 39 (BIA 1970). "[U]nless there is evidence to show that the father of a legitimated child has been deprived of his natural right to custody, he will be presumed to share custody with the mother". *Matter of Rivers*, 17 I&N Dec. 419, 422-23 (BIA 1980). In the absence of a judicial determination or grant of custody, the parent having actual, uncontested custody of the child is to be regarded as having legal custody. *Matter of M*, 3 I&N Dec. 850, 856 (BIA 1950).

The record contains a July 8, 1993, Dade County, Florida, Circuit Court divorce decree for the applicant's parents, awarding primary residential guardianship of the applicant to her paternal grandmother, ordering shared parental responsibilities over the applicant to both of her parents, and reserving court jurisdiction over the issue of child visitation and custody. The record additionally contains an October 24, 2001, Dade County, Florida, Circuit

Court, "Report of General Master and Notice of Filing" filed by the applicant's father, petitioning for primary physical custody over the applicant, and indicating that the applicant's father had filed a "Petition for Modification" of the primary residential guardianship order entered by the court on July 8, 1993. The record contains a November 21, 2001, Dade County, Florida Circuit Court, "Order on Report of General Master" decree ordering that the contents of "Report of General Master" dated October 24, 2001, be ratified and approved.

The AAO notes that the Dade County, Florida Circuit Court did not award legal custody over the applicant to her paternal grandmother. Rather, the court awarded limited, primary residential guardianship rights to the applicant's paternal grandmother in 1993. The AAO notes further that the 1993 divorce decree awarded shared parental responsibilities over the applicant to each of her parents. Moreover, the AAO notes that the Dade County, Florida Circuit Court modified the applicant's parents' 1993 divorce decree and awarded primary residential guardianship to the applicant's father. Based on all of the above factors, the AAO finds that the applicant has established that her father had legal custody over the applicant subsequent to his July 8, 1993 divorce, and prior to the applicant's eighteenth birthday.

January 31, 2001, U.S. immigrant visa information for the applicant, and November 2001, "Order on Report of General Master" decree information contained in the record reflect that the applicant was admitted into the U.S. as a lawful permanent resident in 2001, and that she subsequently resided in the U.S. with her father prior to her eighteenth birthday. The record additionally contains U.S. Certificate of Naturalization information reflecting that the applicant's father became a naturalized U.S. citizen on June 2, 1999, prior to the applicant's eighteenth birthday.

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 AAO finds the applicant has established that she meets the requirements for citizenship as set forth in section 320 of the Act. The appeal will therefore be sustained.

**ORDER:** The appeal is sustained.