

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

E2

PUBLIC COPY



FILE:



Office: NEW YORK, NY

Date:

JUN 05 2008

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 black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The record reflects that the applicant was born in the Dominican Republic on November 26, 1988. He turned eighteen on November 26, 2006. The applicant's father, [REDACTED] was born in the Dominican Republic, and he became a naturalized U.S. citizen on September 21, 2001, when the applicant was seventeen years old. The applicant's mother, [REDACTED] was born in the Dominican Republic, and she is not a U.S. citizen. The record reflects that the applicant's parents divorced in the Dominican Republic on February 22, 1994. The applicant was admitted as a U.S. lawful permanent resident on October 29, 1995, when he was six years old. He presently seeks a certificate of citizenship based on the claim that he derived U.S. citizenship through his father.

The district director determined the applicant had failed to provide evidence establishing that his U.S. citizen father had legal and physical custody over him, prior to the applicant's eighteenth birthday. The district director concluded that the applicant did not meet requirements for citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431. The Form N-600 was denied accordingly.

On appeal, the applicant asserts that his father has legal and physical custody over him. The applicant submits a copy of a sworn declaration reflecting that in June 2003, his mother transferred guard or custody rights over the applicant to his father. The applicant indicates that he is therefore eligible for derivative citizenship through his father.

The AAO notes that section 320 of the former Immigration and Nationality Act (former Act) was amended by the Child Citizenship Act of 2000 (CCA), which took effect on February 27, 2001. The provisions of the CCA are not retroactive, and the amended provisions of section 320 of the Act apply only to persons who were not eighteen years old as of February 27, 2001. In the present matter, the applicant was twelve years old when section 320 of the amended Act provisions took effect. The applicant is therefore eligible for consideration under section 320 of the amended Act. *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001.)

Section 320 of the Act, as amended, permits a child born outside of the U.S. to automatically become a citizen of the United States upon fulfillment of the following conditions:

- (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.) In the absence of a judicial determination or grant of custody in a case of a legal separation

of the naturalized parent, 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).

In the present matter, the record contains a divorce decree reflecting that the applicant's parents divorced in the Dominican Republic on February 22, 1994. The divorce decree does not address the issue of custody over the applicant. The record contains a subsequent June 17, 1994, untranslated court document. On appeal, the applicant submits a June 27, 2003, sworn declaration signed by his mother, granting guard or custody of the applicant to the applicant's father.

The regulation provides at 8 C.F.R. § 341.2(c) that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. Under the preponderance of evidence standard, it is generally sufficient that the proof establish that something is probably true. *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989.)

The AAO finds that the applicant has failed to establish by a preponderance of the evidence that his U.S. citizen father obtained legal custody over him prior to the applicant's eighteenth birthday. The applicant's parents' February 22, 1994, divorce decree does not address custody issues over the applicant, and the AAO notes that the June 17, 1994, court document contained in the record is untranslated, and thus lacks probative value for purposes of the present proceedings. *See* 8 C.F.R. § 103.2(b)(3).¹ The AAO notes further that even if the June 1994, court document did have probative value, statements contained in the record indicate that the document granted custody over the applicant to his mother, rather than to his father. The AAO notes additionally that the June 2003, sworn declaration from the applicant's mother is a private document, and does not constitute a court order or a legal amendment to the applicant's parents' February 22, 1994, divorce decree.

The applicant also failed to establish that, prior to his eighteenth birthday, his U.S. citizen father had actual, uncontested custody over the applicant, such as to constitute legal custody for section 320 of the Act citizenship purposes.

The evidence contained in the record pertaining to the applicant's father's actual, physical custody over the applicant consists of the following:

The applicant's April 1995, Immigrant Visa and Alien Registration application, reflecting the applicant's address in the Dominican Republic, and reflecting that his intended permanent address upon immigration was with his grandmother in Carolina, Puerto Rico.

¹ The regulation provides at 8 C.F.R. § 103.2(b)(3) that:

Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

The untranslated document fails to comply with the requirements set forth in 8 C.F.R. § 103.2(a)(3).

The applicant's October 1995, Immigrant Visa and Alien Registration approval, reflecting that he was admitted at San Juan, Puerto Rico, and reflecting that his address was in Carolina, Puerto Rico.

A copy of the biographical information page of the applicant's U.S. passport, reflecting that the applicant was issued a U.S. passport by the New York Passport Agency on January 9, 2003.

School transcripts reflecting that the applicant attended school in the Dominican Republic between January 2003 and May 2006, and reflecting that he received his high school graduation certificate from a school in the Dominican Republic on December 19, 2006.

The AAO finds that the above evidence fails to establish, by a preponderance of the evidence, that the applicant was in the actual, uncontested custody of his U.S. citizen father at any time after his parents' divorce in 1994. To the contrary, the above evidence reflects that the applicant lived with his grandmother in Puerto Rico after his 1995 admission into the U.S. as a lawful permanent resident. The evidence reflects further that the applicant attended, and completed high school in the Dominican Republic. The AAO notes the issuance of a U.S. passport by the New York passport agency on January 9, 2003. School documentation contained in the record reflects, however, that the applicant lived in the Dominican Republic in January 2003, and the record contains no evidence to indicate that the applicant lived in New York with his father at any time before, or after, January 2003.

The applicant additionally failed to meet the requirement at section 320(a)(3) of the Act that he reside in the physical custody of his U.S. citizen father prior to his eighteenth birthday. Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33), states that, "[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." As discussed above, the evidence contained in the record pertains to the applicant's residence with his grandmother in Puerto Rico, and to his residence outside of the United States, in the Dominican Republic. The record contains no evidence to indicate or establish that the applicant resided in the United States with his U.S. citizen father prior to his eighteenth birthday.

Because the applicant failed to establish by a preponderance of the evidence that he was in the legal or physical custody of his U.S. citizen father prior to his eighteenth birthday, the applicant does not qualify for automatic citizenship under section 320 of the Act.

The AAO notes that the CCA repealed section 321 of the former Act. Nevertheless, all persons who acquired citizenship automatically under section 321 of the former Act, as previously in force prior to February 27, 2001, may apply for a Certificate of Citizenship at any time. *Matter of Rodriguez-Tejedor, supra.*

Section 321 of the former Act provided, in pertinent part, that:

(a) [A] child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, 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 said child is under the age of 18 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 (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

In the present matter, the applicant established that his parents were legally separated. As previously discussed, however, the applicant failed to establish by a preponderance of the evidence that his father had legal custody over him. Accordingly, the applicant failed to meet the requirements set forth in section 321(a)(3) of the former Act.

The AAO notes the fact that the applicant was issued a U.S. passport in January 2003. In accordance with *Matter of Villanueva*, 19 I&N Dec. 101 (BIA 1984), a valid U.S. passport constitutes conclusive proof of a person's U.S. citizenship and may not be collaterally attacked. Nevertheless, U.S. Citizenship and Immigration Services (CIS) lacks statutory authority to issue a certificate of citizenship when an applicant fails to meet the relevant statutory provisions set forth in the Act. *Iddir v. INS*, 301 F.3d 492 (7th Cir. 2002). A certificate of citizenship may thus not be issued in the absence of evidence of eligibility

Because the applicant has failed to meet his burden of proof in the present matter, the appeal will be dismissed and the N-600 application will be denied.

ORDER: The appeal is dismissed. The application is denied.