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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: NEW YORK, NY Date: MAY 23 2008

IN RE: Applicant: [REDACTED]

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application 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 sustained.

The record reflects that the applicant was born on December 7, 1987 in Russia. The record further reflects that her parents are [REDACTED] and [REDACTED]. The applicant's parents were divorced in Russia on April 13, 1991. The applicant's mother became a U.S. citizen upon her naturalization on September 22, 2005, when the applicant was 17 years old. The applicant was admitted to the United States as a lawful permanent resident on July 24, 1998, when she was 10 years old. The applicant seeks a certificate of citizenship pursuant to section 320 of the Immigration and Naturalization Act (the Act), 8 U.S.C. § 1431, claiming that she acquired U.S. citizenship from her mother.

The district director denied the applicant's citizenship claim after finding that the applicant was not residing in her mother's physical custody. The director's finding was based on the applicant's testimony that she had lived in Florida with her mother's cousin while attending High School. The application was denied accordingly.

On appeal, the applicant submits a letter stating that she resided with her mother until February 2006, and a letter from her aunt stating that the applicant resided with her in Florida from February until May 2006.

Section 320 of the Act, 8 U.S.C. § 1431, 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 birthdays as of February 27, 2001. Because the applicant was under the age of 18 on February 27, 2001, she meets the age requirement for benefits under the CCA.

Section 320 of the Act, 8 U.S.C. § 1431, 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.

The record contains a copy of the applicant's parents' divorce decree, but the decree does not address the issue of the applicant's custody. Legal custody vests "by virtue of either a natural right or a court decree". See *Matter of Harris*, 15 I&N Dec. 39 (BIA 1970). Where the parents were never married, the mother is presumed to retain legal custody by natural right. *Id.* at 41. Where, as here, the applicant's parents were married, the applicant must present a copy of a court document, such as a divorce decree, legal separation, or custody order, indicating which parent was awarded custody upon their separation. See 8 C.F.R. § 320.1 (providing that "[i]n the case of a child of divorced or legally separated parents, the Service will find a U.S. citizen parent to have legal custody of a child, for the purpose of the CCA, where there has been an award of primary care, control, and maintenance of a minor child to a parent *by a court of law or other appropriate*

government entity pursuant to the laws of the state or country of residence.”) (Emphasis added). In the absence of a judicial determination or grant of custody following a divorce, the parent having actual, uncontested custody of the child is to be regarded as having legal custody. See *Matter of M*, 3 I&N Dec. 850, 856 (BIA 1950). The AAO finds that the applicant’s mother had actual, uncontested custody of the applicant. The AAO further finds that the applicant was in her mother’s physical custody when her mother naturalized and until, at least, February 2006, and that she therefore acquired U.S. citizenship pursuant to section 320 of the Act.

The AAO notes that the record contains a copy of the applicant’s U.S. passport. 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.

Pursuant to 8 C.F.R. § 341.2(c), the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. In order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is “probably true” or “more likely than not.” *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). The applicant has met her burden and the appeal will be sustained.

ORDER: The appeal is sustained.