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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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The record reflects that the applicant was born on June 25, 1994 in the Dominican Republic. The applicant's parents, as reflected in his birth certificate, are [REDACTED] and [REDACTED]. The applicant's father became a naturalized U.S. citizen on August 3, 1996. The applicant's parents were divorced on December 12, 1997. The applicant was admitted to the United States as a lawful permanent resident on August 3, 2005. The applicant seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, based on the claim that he acquired U.S. citizenship through her father.

The district director concluded, in relevant part, that the applicant had failed to establish that he was in the legal custody of his U.S. citizen father, as required by section 320 of the Act. The application was denied accordingly. On appeal, the applicant's father indicates that he is submitting a copy of his divorce decree.

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 had not yet reached their 18th birthdays as of February 27, 2001. Because the applicant is under 18 years old, he 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 reflects that the applicant was admitted to the United States as a lawful permanent resident in 2005, and that the applicant's father is a naturalized U.S. citizen since 1996. The applicant is under 18 years of age. The record suggests that the applicant is in his father's physical custody. The question remains whether the applicant is residing in his father's legal custody as required by subsection (a)(3) of section 320 of the Act, 8 U.S.C. § 1431(a)(3).

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 notes that the applicant’s parents’ divorce decree does not address the issue of the applicant’s custody. Nevertheless, the record contains two documents entitled “Notarial Authorization” executed by the applicant’s mother, in 2000 and 2007, respectively, granting the applicant’s father authority to care for the applicant, obtain U.S. citizenship on his behalf, among other things. The AAO also notes that the applicant is residing in his father’s physical custody. The AAO therefore finds that the applicant’s father has actual, uncontested custody of the applicant. The applicant has thus established that he is in the legal custody of his father. Accordingly, the AAO finds that he has acquired citizenship pursuant to section 320 of the Act, 8 U.S.C. § 1431.

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 in the present case has met his burden and the appeal will be sustained.

ORDER: The appeal is sustained.