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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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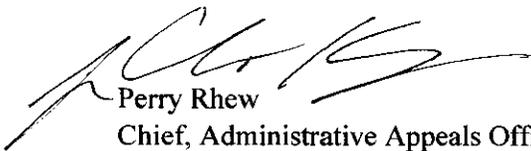
APPLICATION: Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act, 8 U.S.C. § 1431.

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Miami, Florida, denied the Application for Certificate of Citizenship (Form N-600) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the appeal will be sustained.

The record reflects that the applicant was born in Cuba on [REDACTED]. The applicant's mother became a U.S. citizen by naturalization on [REDACTED]. The applicant's father is not a U.S. citizen. The applicant's parents were married at the time of the applicant's birth. The applicant was admitted to the United States as a lawful permanent resident on [REDACTED]. The applicant seeks a certificate of citizenship claiming that he derived U.S. citizenship from his mother pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The field office director determined that the applicant failed to establish eligibility for derivative citizenship under section 320 of the Act because he failed to provide requested documentation. The field office director denied the application accordingly. *See Decision of the Field Office Director*, dated September 6, 2011. On appeal, the applicant states that he is submitting the requested documents. *See Form I-290B*, dated September 19, 2011.

The applicable law for derivative citizenship purposes is that in effect at the time the critical events giving rise to eligibility occurred. *Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005); *accord Jordon v. Attorney General*, 424 F.3d 320, 328 (3d Cir. 2005). Section 320 of the Act, as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (CCA), applies to this case because the applicant was not yet over the age of eighteen years on February 27, 2001, the effective date of the CCA. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 156 (BIA 2001) (en banc). Section 320(a) of the Act, 8 U.S.C. § 1431(a), provides:

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 regulations define the term "legal custody" to refer to "the responsibility for and authority over a child." 8 C.F.R. § 320.1. In the case of divorced parents:

a U.S. citizen parent [will be found] 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. The

Service will consider a U.S. citizen parent who has been awarded "joint custody," to have legal custody of a child. There may be other factual circumstances under which the Service will find the U.S. citizen parent to have legal custody for purposes of the CCA.

Id.

Here, the applicant meets all of the requirements set forth in section 320(a) of the Act. First, the applicant's mother became a citizen of the United States by naturalization when the applicant was 15 years old. *See Certificate of Naturalization for* [REDACTED]. Second, the applicant has been residing in the United States pursuant to a lawful admission for permanent residence since August 23, 1997. *See Lawful Permanent Resident Card of* [REDACTED]. Third, the record reflects that the applicant is residing in the legal and physical custody of his U.S. citizen mother. On appeal, the applicant submits the record of his parents' divorce in Cuba, which shows that his parents were granted joint custody of him and that his mother was granted physical custody of him. Accordingly, the record now establishes that all the conditions for the automatic acquisition of U.S. citizenship pursuant to section 320 of the Act have been met.

The burden of proof rests on the claimant to establish the claimed citizenship by a preponderance of the evidence. *See* 8 C.F.R. § 320.3. Here, the applicant has met this burden. Accordingly, the decision of the director will be withdrawn, the appeal will be sustained and the matter will be returned to the director for further action in accordance with this decision.

ORDER: The appeal is sustained.