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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

Date: DEC 19 2013 Office: MIAMI, FL File: [redacted]

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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director (the director), Miami, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on August 9, 1988 in Trinidad and Tobago. The applicant's birth certificate indicates that his parents are and The applicant's parents were never married to each other. The applicant's mother became a U.S. citizen upon her naturalization on June 14, 2006, when the applicant was 17 years old. The applicant's father is not a U.S. citizen. The applicant was admitted to the United States as a lawful permanent resident on October 22, 1997, when he was nine years old. The applicant presently seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, claiming that he acquired U.S. citizenship through his mother.

The director denied the application upon finding that the applicant had failed to respond to a request for evidence. On appeal, the applicant submits his mother's naturalization certificate and requests reconsideration of his claim. *See* Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO.

The applicable law for derivative citizenship purposes is "the law in effect at the time the critical events giving rise to eligibility occurred." *See Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005). Section 320 of the Act, as amended by the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), is applicable in this case.

Section 320 of the Act, as amended, 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 applicant has established that he is the child of a U.S. citizen, that his U.S. citizen parent naturalized and he obtained lawful permanent resident status prior to his eighteenth birthday. At issue in this case is whether the applicant can establish that he resided in his mother'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, 41 (BIA 1970). The regulations provide that legal custody will be presumed "[i]n the

case of a biological child born out of wedlock who has been legitimated and currently resides with the natural parent." 8 C.F.R. § 320.1 (defining "legal custody"). The Act defines the term "residence" as "the place of general abode . . . his principal, actual dwelling place in fact, without regard to intent." Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33).

The AAO requested that the applicant submit evidence to establish that he was residing in the United States in his mother's legal and physical custody. The AAO afforded the applicant 30 days in which to respond to the request for evidence, but no additional evidence or other submission has been received by this office to date. The record does not contain evidence to demonstrate that the applicant was residing in the United States in his mother's legal and physical custody. The applicant has therefore failed to establish that he was residing in the United States in the legal and physical custody of his U.S. citizen mother.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.