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

(b)(6)

[redacted]

Date: SEP 0 6 2013 OFFICE: MIAMI, FL [redacted]

IN RE: [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.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

The applicant was born in Cuba on , to married parents. His parents divorced in February 1999, and on December 22, 2002 the applicant was admitted into the United States as a lawful permanent resident. The applicant's mother became a naturalized U.S. citizen on March 30, 2009. His father is not a U.S. citizen. 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 derived U.S. citizenship through his mother.

In a decision dated November 5, 2012, the director determined that the applicant had failed to establish that he resided in his mother's legal and physical custody, as required by section 320(a) of the Act. The application was denied accordingly. On appeal, the applicant submits a copy of his parent's divorce decree, and indicates that the decree establishes that his mother was awarded legal and physical custody over him at the time of her divorce.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ,* 381 F.3d 143, 145 (3d. Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

Section 320 of the Act provides, 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.

Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33) provides 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."

Legal custody vests "[b]y virtue of either a natural right or a court decree." *Matter of Harris,* 15 I&N Dec. 39, 41 (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." *See Matter of M,* 3 I&N Dec. 850, 856 (BIA 1950).

The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. The "preponderance of the evidence" standard requires that the record demonstrate that the applicant's claim is "probably true," based on the specific facts of each case. *Matter of Chawathe,* 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-,* 20 I&N Dec. 77, 79-80 (Comm. 1989)). Even where some doubt remains, an applicant will meet this standard if she or he submits relevant, probative and credible evidence that the claim is "more likely than not" or "probably" true. *Id.* (citing *INS v. Cardoza-Fonseca,* 480 U.S. 421, 431 (1987)).

In the present matter, the record contains a copy of the applicant's mother's naturalization certificate reflecting that she became a naturalized U.S. citizen on March 30, 2009, when the applicant was nine years old. The applicant has therefore established by a preponderance of the evidence that he meets the requirements set forth in section 320(a)(1) and (2) of the Act.

In order to establish that he meets section 320(a)(3) of the Act requirements, the applicant submits a Cuban divorce decree reflecting that his parents were legally divorced on February 23, 1999. The divorce decree reflects further that the applicant's mother was awarded sole custody of the applicant at the time of her divorce, and that the applicant's father was ordered to pay child support, and "open communications" were allowed between the applicant and his father. The record also contains information reflecting that the applicant applied for admission into the United States with his mother on December 22, 2002, when he was six years old. They were paroled into the country, and the applicant has resided in the United States pursuant to a lawful admission for permanent residence since December 22, 2002. *See Form I-213, Record of Deportable/Inadmissible Alien,* and *Form I-181, Memorandum of Creation of Record of Lawful Permanent Residence.*

Upon review, the AAO finds that the applicant has established by a preponderance of the evidence that he has resided in the United States in the legal and physical custody of his mother since December 2002, when he became a lawful permanent resident. The applicant therefore meets the requirements set forth in section 320(a)(3) of the Act.

The burden of proof rests on the claimant to establish the claimed citizenship by a preponderance of the evidence. *See* 8 C.F.R. § 341.2(c). Here, the applicant has establishes that all conditions for automatic acquisition of U.S. citizenship pursuant to section 320 of the Act have been met. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.