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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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Date: JAN 11 2012 Office: CHICAGO, IL

FILE: 

IN RE: 

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

ON BEHALF OF APPLICANT:

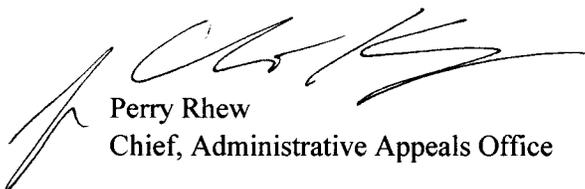


INSTRUCTIONS:

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Chicago, Illinois, denied the Application for Certificate of Citizenship (Form N-600) and 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 in Guanajuato, Mexico on November 21, 1989. The applicant's father became a U.S. citizen by naturalization on April 12, 1999. The applicant's mother 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 February 17, 1999. The applicant seeks a certificate of citizenship claiming that he derived U.S. citizenship from his father 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 was ineligible for derivative citizenship under section 320 of the Act because he failed to demonstrate that he has resided in the physical and legal custody of his U.S. citizen father. The field office director denied the application accordingly. *See Decision of the Field Office Director*, dated June 9, 2011. On appeal, counsel contends that all the evidence submitted to support the application established that the applicant was residing and still is in the legal and physical custody of his U.S. citizen father and lawful permanent resident mother. *See Form I-290B*, dated July 7, 2011. Counsel indicated that she would forward additional evidence in regard to physical and legal custody within thirty days, but to date, over six months later, the AAO has received no additional evidence from counsel or the applicant.

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. Additionally,

For the purpose of the CCA, the Service will presume that a U.S. citizen parent has legal custody of a child, and will recognize that U.S. citizen parent as having lawful authority over the child, absent evidence to the contrary, in the case of . . . [a] biological child who currently resides with both natural parents

Id. 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. In the absence of a judicial determination or a judicial or statutory grant of custody, the parent having actual uncontested custody is to be regarded as having “legal custody” of the child. *See Matter of M-*, 3 I&N Dec. 850, 856 (CO 1950).

Here, the applicant has not established that he was residing in the United States in the legal and physical custody of his father after his father became a U.S. citizen and prior to November 11, 2007, the date on which the applicant reached the age of eighteen years. The record contains evidence that the applicant’s parents may be legally separated or divorced. Specifically, the record reflects that the applicant’s father and mother reside at different addresses in Chicago, Illinois. *See Form N-600*. While the applicant, on the Form N-600, claimed that he resided with his U.S. citizen father, documentation in the record indicates that the applicant was residing at the same address as his mother at the time he was apprehended by immigration officials. *See Record of Deportable/Inadmissible Alien*. As such, the evidence in the record called into question whether the applicant’s parents were legally separated or divorced and whether the applicant’s father had legal or physical custody of the applicant prior to the applicant obtaining the age of eighteen years. The applicant was given an opportunity to provide evidence to explain: (1) the inconsistencies in regard to his address; and (2) whether his parents were legally separated or divorced and if so, to establish which parent had legal and physical custody. *See Request for Evidence*. The applicant failed to submit with the application, in response to the request for evidence, or on appeal any explanation or evidence in regard to which parent had physical or legal custody of him after April 12, 1999 and prior to November 21, 2007. Accordingly, the applicant has not established that he resided in the legal and physical custody of his father, as required for him to derive citizenship through his father under section 320(a) of the Act.

The applicant must meet his burden of proof by establishing the claimed citizenship by a preponderance of the evidence. Section 341(a) of the Act; 8 U.S.C. § 1452; 8 C.F.R. § 320.3. Here, the applicant has not met this burden. Accordingly, the applicant is not eligible for a certificate of citizenship under section 320 of the Act, and the appeal will be dismissed.

ORDER: The appeal is dismissed.