

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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



**U.S. Citizenship
and Immigration
Services**

E2

FILE:

Office: NEW YORK

Date: APR 22 2009

IN RE: Applicant:

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.

John F. Grissom
Acting Chief, Administrative Appeals Office

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

The record reflects that the applicant was born on May 2, 1990 in Ukraine. The record reflects that the applicant's mother is [REDACTED]. His father, as listed on his birth certificate, is [REDACTED]. The applicant's parents were married in 1990, and divorced in 1991. The applicant's mother married [REDACTED] on May 29, 1993. The applicant's mother became a U.S. citizen upon her naturalizations on September 27, 2005. The applicant was admitted to the United States as a lawful permanent resident as of August 1, 2005. The record indicates that the applicant followed to join his mother, and adjusted his status to lawful permanent resident as an asylee. The applicant 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 from his parents.

The district director denied the applicant's citizenship claim finding that he had failed to establish that he was the child of [REDACTED]. The director considered the birth and marriage records submitted by the applicant, and noted several inconsistencies in the applicant's and his parents' names. Having found that the applicant had failed to establish that he was the child of a U.S. citizen, the director denied his application.

On appeal, the applicant submits a statement signed by [REDACTED]. In her statement, Mrs. [REDACTED] explains that her name was changed to [REDACTED] when she married the applicant's father ([REDACTED]) in 1990. *See* Statement dated September 9, 2007. She further indicates that she was divorced from the applicant's father in 1991. *Id.* She married [REDACTED] in 1993, and has since been known as [REDACTED]. *Id.* Her naturalization certificate was issued in 2005 under that name. *Id.* The applicant's name at birth was [REDACTED]. *Id.* This was the name he used when he immigrated to the United States, as well as the name on his passport, social security card, adjustment of status and citizenship of certificate applications. *Id.* His permanent resident card was issued in the name [REDACTED]. *Id.* The applicant's mother states that a USCIS officer suggested that she include the surname [REDACTED] to her son's name at the time of his adjustment of status in 2006. *Id.* She maintains that she is the applicant's mother and that he acquired U.S. citizenship pursuant to section 320 of the Act, 8 U.S.C. § 1431.

Section 320 of the Act, 8 U.S.C. § 1431, was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA benefits all persons who have not yet reached their eighteenth birthdays as of February 27, 2001. Because the applicant was under the age of 18 on February 27, 2001, 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.

(b) Subsection (a) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

At issue in this case is whether the applicant is the child of [REDACTED]. The applicant has established that he was under 18 when [REDACTED] naturalized and when he was admitted to the United States as a lawful permanent resident. It is also established that the applicant has resided in the United States with [REDACTED] and [REDACTED]. See School Records.

The AAO finds that the applicant has established, by a preponderance of the evidence, that [REDACTED] is his mother. Despite the repeated name changes, the record contains sufficient evidence to indicate that the applicant is indeed the son of [REDACTED] and is one and the same person as the individual who was admitted to the United States as an asylee following to join his parent, and subsequently as a lawful permanent resident.

The AAO notes that the divorce decree between the applicant's parents is included in the record. Nevertheless, the decree is silent as to the applicant'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 (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"). 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 record establishes, by a preponderance of the evidence, that the applicant was "residing in the United States" in his mother's "actual, uncontested custody." Thus, the AAO must conclude that the applicant automatically acquired U.S. citizenship pursuant to section 320 of the Act.

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. In order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is "probably true"

or “more likely than not.” *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). The applicant has met his burden and the appeal will be sustained.

ORDER: The appeal is sustained.