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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

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FILE:

Office: NEW YORK, NY

Date: **MAY 07 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:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief  
Administrative Appeals Office

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

The record reflects that the applicant was born on September 21, 1983 in Iran. The applicant's parents, [REDACTED] and [REDACTED] were married in 1981, and divorced in 1989. The applicant was admitted to the United States as a lawful permanent resident on August 12, 2001, when he was 17 years old. The applicant's mother became a U.S. citizen on February 18, 2000, when the applicant was 17 years old. 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 acquired U.S. citizenship through his mother.

The district director concluded, in relevant part, that the applicant had failed to establish that he was in the legal custody of his U.S. citizen mother, as required by section 320 of the Act. The application was denied accordingly.

On appeal, the applicant contends that he has been in his mother's legal and physical custody since 2001. In support of his claim, the applicant submitted a "Power of Attorney" executed by his father purporting to transfer custody of him to his mother. The applicant also submits a copy of his U.S. passport, issued in 2001.

Section 320 of the Act was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA benefits all persons who had not yet reached their 18th birthdays as of February 27, 2001. Because the applicant was under 18 years old 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.

The record reflects that the applicant was admitted to the United States as a lawful permanent resident in 2001, and that his mother became a U.S. citizen in 2000. The applicant's parents were divorced in 1998. The divorce decree indicates that the applicant's father was granted legal custody of the applicant. The question remains whether the applicant was residing in the United States in the legal and physical custody of his U.S. citizen mother after his admission to the United States and before his 18<sup>th</sup> birthday.

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). The regulations provide 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 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 applicant’s parent’s divorce decree indicates that custody of the applicant was granted to his father upon his parents divorce. In 2001, the applicant’s father executed a “Power of Attorney” purporting to transfer custody to the applicant’s mother. The AAO notes that the “Power of Attorney” states that it is valid from July 26, 2001 to October 26, 2001. There is no other evidence relating to the applicant’s legal custody.<sup>1</sup> The AAO finds that the limited power of attorney submitted does not establish if or when the applicant’s mother had legal custody of the applicant. The applicant’s father’s privately-executed, three-month transfer of custody cannot override the custody award in the applicant’s parent’s divorce decree.

The AAO notes that the record contains a copy of the applicant’s U.S. passport. In accordance with *Matter of Villanueva*, 19 I&N Dec. 101 (BIA 1984), a valid U.S. passport constitutes conclusive proof of a person’s U.S. citizenship and may not be collaterally attacked. Nevertheless, where, as here, there is insufficient evidence to establish when the applicant acquired U.S. citizenship, a Certificate of Citizenship cannot be issued.<sup>2</sup> See USCIS Adjudicator’s Field Manual at § 71.1.

In order to issue the applicant’s Certificate of Citizenship, USCIS must determine when the applicant began residing in his mother’s legal custody. 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 in this case did not meet his burden. The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.

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<sup>1</sup> The record suggests that the applicant was in his mother’s physical custody since immigrating to the United States in 2001. See e.g. Applicant’s Mother’s Income Tax Returns.

<sup>2</sup> 8 C.F.R. § 341.1 provides that an application for a certificate of citizenship “shall be supported by documentary and other evidence essential to establish the claimed citizenship.”