

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 20529-2090



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

E₂



FILE: [Redacted] Office: HIALEAH, FL Date: APR 02 2010

IN RE: Applicant: [Redacted]

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

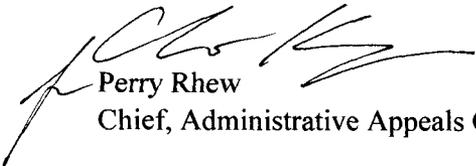
ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

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).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Hialeah, Florida, 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 June 18, 1991 in Cuba. The applicant's parents are [REDACTED] and [REDACTED]. The applicant's parents divorced in 1993. The applicant was admitted to the United States as a lawful permanent resident as of June 9, 1999, when the applicant was seven years old. His mother became a U.S. citizen upon her naturalization on April 4, 2007, when the applicant was 15 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 upon her naturalization.

The field office director found that the applicant had failed to provide sufficient evidence in support of his claim. Specifically, the director noted that the applicant had not provided his parents' divorce decree and custody order, and his mother's naturalization certificate. The application was accordingly denied.

On appeal, the applicant submits a copy of his mother's naturalization certificate and his parents' divorce record. The applicant states that the evidence was provided to the director as requested. *See* Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO.

Section 320 of the Act was amended by the Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), 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 and that his mother naturalized prior to his 18th birthday.

The applicant, in his Form N-600, Application for Certificate of Citizenship, noted that his parents were married at the time of his birth. The record contains a document indicating that the applicant's parents were divorced in 1993. The document does not contain a custody order determining which parent was awarded legal custody of the applicant upon the divorce.

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 "[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." 8 C.F.R. § 320.1 (defining "legal custody"). 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).

There is no evidence in the record that the applicant was in his mother's legal or physical custody. Therefore, the AAO cannot find that the applicant automatically acquired U.S. citizenship pursuant to section 320 of the Act, 8 U.S.C. § 1431. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.