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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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[redacted]

FILE: [redacted] Office: SAN FRANCISCO, CA Date: AUG 26 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:

[redacted]

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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, San Francisco, California. 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 October 17, 1992 in China. The applicant's parents are The applicant's parents were married on March 14, 1989 and divorced on March 30, 2001. The applicant's mother became a U.S. citizen upon her naturalization on May 20, 2009, when the applicant was 16 years old. The applicant's father is not a U.S. citizen. The applicant was admitted to the United States as a lawful permanent resident on January 21, 2007, when he was 14 years old. The applicant presently seeks a certificate of citizenship 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 not in his U.S. citizen parent's legal and physical custody as is required by section 320 of the Act. The director's determination was based on the finding that the applicant's parents' divorce decree awarded custody to the applicant's father. The application was accordingly denied.

On appeal, the applicant, through counsel, maintains that he was residing in his mother's legal and physical custody. *See* Appeal Brief at 3-4. Specifically, the applicant notes that he had not resided with his father since 1999 and that his custody arrangement was officially modified by a civil mediation decision entered in 2006 (granting custody to his mother). *Id.*

The applicable law for derivative citizenship purposes is "the law in effect at the time the critical events giving rise to eligibility occurred." *See Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005). Section 320 of the Act, as amended by the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), provides for automatic acquisition of U.S. citizenship upon the fulfillment of certain conditions prior to a child's eighteenth birthday. The CCA, which took effect on February 27, 2001, is not retroactive, and applies only to persons who were not yet 18 years old as of February 27, 2001. Because the applicant was under the age of 18 on February 27, 2001, the CCA is applicable to his case. *See Matter of Rodriguez-Tejedor,* 23 I&N Dec. 153 (BIA 2001).

Section 320 of the Act, as amended, 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 applicant has established that his mother naturalized and that he was admitted to the United States as a lawful permanent resident prior to his eighteenth birthday. The question remains whether he can establish that he was residing in his mother's legal and physical custody.

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 legal custody will be presumed "[i]n the case of a child of divorced or legally separated parents . . . 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"). The applicant's parents' divorce decree awarded custody of the applicant to his father. Nevertheless, the record contains a copy of a 2006 civil mediation decision modifying the original custody order, and awarding custody of the applicant to his mother. The record further establishes that the applicant had been residing with his mother since his admission to the United States as a lawful permanent residence and before his eighteenth birthday. The applicant therefore has established, by a preponderance of the evidence, that he was residing in the United States in the legal and physical custody of his U.S. citizen mother. The record establishes that the applicant automatically acquired U.S. citizenship under section 320 of the Act upon his mother's naturalization in 2009.

The burden of proof in citizenship cases is on the claimant to establish the claimed citizenship by a preponderance of the evidence. 8 C.F.R. §§ 320.3(b)(1) and 341.2(c). The applicant has met his burden of proof, and his appeal will be sustained. The matter will be returned to the San Francisco Field Office for issuance of a certificate of citizenship.

ORDER: The appeal is sustained. The matter is returned to the San Francisco Field Office for issuance of a certificate of citizenship.