

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: SAN JUAN, PR Date: **DEC 27 2010**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Former Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (repealed).

ON BEHALF OF APPLICANT:

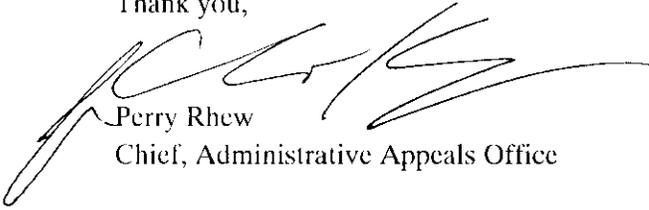
[REDACTED]

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.

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 application was denied by the Field Office Director, San Juan, Puerto Rico. 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 on November 10, 1963 in Antigua. The applicant's parents are [REDACTED]. The applicant's parents were married in 1962 and divorced in 1971. The applicant's mother became a U.S. citizen upon her naturalization on December 22, 1980, when the applicant was 17 years old. The applicant's father became a U.S. citizen after the applicant's eighteenth birthday. The applicant was admitted to the United States as a lawful permanent resident on May 8, 1980. The applicant seeks a certificate of citizenship claiming that he derived U.S. citizenship upon his mother's naturalization.

The field office director determined that the applicant could not derive U.S. citizenship under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432 (repealed), because he could not establish that he was residing in his mother's legal custody prior to his eighteenth birthday. The application was accordingly denied.

On appeal, the applicant, through counsel, maintains that he was residing in his mother's legal custody because he was in her actual, uncontested custody. *See* Applicant's Appeal Brief at 6 (citing *Matter of M*, 3 I & N Dec. 850 (BIA 1950)). The applicant states that he moved to New Jersey to live with his mother when he was 17 years old. *Id.* at 4.

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The applicant has failed to establish his eligibility for citizenship and the appeal will be dismissed for the reasons discussed below.

The applicable law for derivative citizenship purposes is "the law in effect at the time the critical events giving rise to eligibility occurred." *Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9<sup>th</sup> Cir. 2005); *see also Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001) (holding that the amendments to the Act enacted by the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000) are not retroactive and apply only to persons who were not yet 18 years old as of February 27, 2001). Former section 321 of the Act is therefore applicable in this case.

Former section 321 of the Act, stated, in pertinent part, that:

(a) A child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:

(1) The naturalization of both parents; or

(2) The naturalization of the surviving parent if one of the parents is deceased; or

(3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if the child was born out of wedlock and the paternity of the child has not been established by legitimation; and if-

(4) Such naturalization takes place while said child is under the age of 18 years; and

(5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (1) of this subsection, or the parent naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

The record shows that the applicant obtained lawful permanent residency and that his mother naturalized in 1980 prior to his eighteenth birthday on November 10, 1981. At issue in this case is whether the applicant's mother had legal custody of the applicant following his parent's 1971 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 applicant's parents' divorce decree does not address the issue of the applicant's custody.<sup>1</sup> Where, as in this case, the parents have legally separated but there is no formal, judicial custody order, the parent having "actual, uncontested custody" is be regarded as having "legal custody" of the child. See *Bagot v. Ashcroft*, 398 F.3d 252, 266-67 (3d Cir. 2005) (citing *Matter of M-*, *supra*, at 856). The applicant claims that he was in his mother's "actual, uncontested custody." In support of his claim, he submitted his General Education Development (GED) test results (dated December 28, 1980 and stating his address as that of his father in Saint Croix); a letter dated August 19, 2010 from the applicant's father indicating that the applicant was no longer in his custody as of September 1981 when the applicant purportedly moved to New Jersey to live with his mother; an Essex County College admissions application and affidavit of residence indicating that the applicant was residing in New Jersey for one month as of October 21, 1981; and a transcript and letter from Essex County College verifying the applicant's enrollment for one semester in 1982.

---

<sup>1</sup> The record contains a copy of the applicant's parents' divorce petition dated in 1969 requesting that the applicant remain in his father's custody.

The relevant evidence does not establish that the applicant was in his mother's actual, uncontested custody prior to his eighteenth birthday. The only contemporaneous evidence of the applicant's New Jersey residence is his college admissions application and residence affidavit. The applicant's father's letter is dated in August 2010 and contains only a generalized statement that the applicant was no longer in his custody as of September 1981. The applicant's college transcript indicates that he was enrolled in the Spring of 1982, after his eighteenth birthday. Although the applicant immigrated to the United States on the basis of a petition filed by his mother, the record indicates that he did not reside with her upon his admission to the United States. The applicant's immigrant visa application stated that he would be residing with his father in Saint Croix, not his mother in New Jersey. The applicant's GED report also lists his father's residence in Saint Croix as his address.

"There must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." *Fedorenko v United States*, 449 U.S. 490, 506 (1981). The burden of proof in citizenship cases is on the claimant to establish the claimed citizenship by a preponderance of the evidence. See Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2. The applicant has failed to meet his burden of proof, and his appeal will be dismissed.

**ORDER:** The appeal is dismissed.