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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: MIAMI, FL

Date:

JAN 15 2010

IN RE:

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

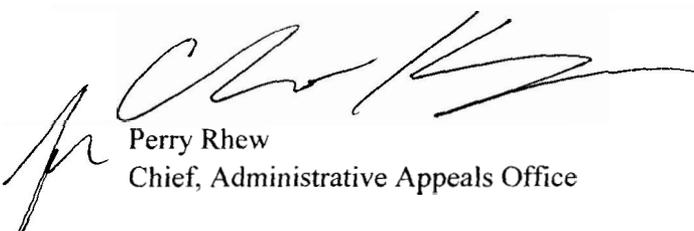
ON BEHALF OF APPLICANT:

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, Miami, 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 26, 1988 in Cuba. The applicant's parents are [REDACTED] and [REDACTED]. The applicant's parents were married in 1982 and divorced in 1998. The applicant's father became a U.S. citizen upon his naturalization on June 14, 2006, when the applicant was 17 years old. The applicant was admitted to the United States as a lawful permanent resident on September 18, 1998, when he was 10 years old. The applicant's 18th birthday was on June 26, 2006. 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 father.

The field office director found that the applicant did not acquire U.S. citizenship under section 320 of the Act because he failed to establish that he was in his father's physical custody. The application was therefore denied.

On appeal, the applicant submits a copy of his high school diploma and his father's 2007 and 2006 income tax returns.

Section 320 of the Act was amended by the Child Citizenship Act of 2000 (CCA), Pub. L. 106-395, 114 Stat. 1631 (Oct. 30, 2000), and took effect on February 27, 2001. CCA § 104. The CCA benefits all persons who had not yet reached their 18th birthdays as of February 27, 2001. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 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 father naturalized, prior to his 18th birthday. The question remains whether the applicant was residing in the United States as a lawful permanent resident, in his father'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 (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 AAO finds that the applicant’s parents’ divorce decree, issued in Cuba in 1998, awards joint legal custody to the applicant’s parents. Although the decree states that guardianship and care of the applicant is awarded to his mother, the AAO notes that the decree, in the Spanish language, awards the “*patria potestad*” to both parents. *Patria Potestas*, according to Black’s Law Dictionary, is the “responsibility to support and maintain family members.” The AAO notes the definition of “joint custody” in 8 C.F.R. § 320.1 as the “equal responsibility for and authority over the care, education, religion, medical treatment, and general welfare of a child” The AAO finds that the applicant was in his parents’ joint legal custody upon his parents’ divorce.

The AAO finds, however, that the record does not establish that the applicant was in his father’s physical custody between the time of his admission to the United States as a lawful permanent resident and his 18th birthday. In this regard, the AAO notes that there is a child support order in the record, dated in 1999, whereby the applicant’s father is ordered to pay child support to the applicant’s mother. The AAO further notes that the applicant’s immigration documents suggest that he would be residing with his mother or her family in the United States. Specifically, the applicant’s immigrant visa application lists his mother’s aunt as the person he intends to join in the United States and states that his father’s residential address is in Cuba. The applicant’s Form I-485, Application to Register Permanent Residence or Adjust Status, is signed by his mother in 1999, and lists her address as his own. The applicant’s father’s tax records correspond to 2006 and 2007, when the applicant had already attained the age of 18 years, and do not list the applicant as a dependent. The applicant’s high school diploma does not indicate with whom he was residing. The applicant’s bank statement corresponds to the year 2007, after his 18th birthday. There is no other evidence to indicate that the applicant was residing in his father’s physical custody at any point before his 18th birthday. The applicant therefore has failed to establish that he was residing in the United States in his father’s physical custody before he turned 18, as is required by section 320 of the Act, 8 U.S.C. § 1431.

Pursuant to 8 C.F.R. § 341.2(c), 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 has failed to establish that he was residing in the United States, as a lawful permanent resident, in the physical custody of his U.S. citizen parent, prior to his 18th birthday. Thus, he has

not met his burden to prove that he automatically acquired U.S. citizenship pursuant to section 320 of the Act, 8 U.S.C. § 1431, and the appeal will be dismissed.

ORDER: The appeal is dismissed.