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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: SAN JUAN, PR

Date:

**JAN 20 2010**

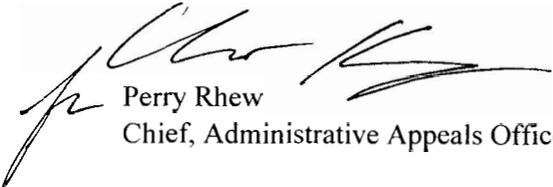
IN RE:

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

ON BEHALF OF APPLICANT:

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.

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, San Juan, Puerto Rico, is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on March 28, 1991 in the Dominican Republic. The applicant's parents, as listed in his birth certificate, are [REDACTED] and [REDACTED]. The applicant's parents were married in 2001. The applicant's father became a U.S. citizen upon his naturalization on May 25, 2006, when the applicant was 15 years old. The applicant was admitted to the United States as a lawful permanent resident on July 2, 2008, 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 father.

The field office director concluded that the applicant did not acquire U.S. citizenship pursuant to section 320 of the Act, 8 U.S.C. § 1431, because he was not residing in his father's custody. The application was denied accordingly.

On appeal, the applicant states that he was admitted to the United States on July 2, 2008 and resided with his father until October 19, 2008, when he returned to the Dominican Republic to continue his studies. The applicant notes that he holds a valid U.S. passport. A copy of the applicant's U.S. passport is included in the record.

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. CCA § 104; *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 applicant has established that his father became a U.S. citizen and that he was admitted to the United States prior to his 18<sup>th</sup> birthday. At issue is whether he has established that he was residing in the United States in the legal and physical custody of his father.

The applicant maintains that he resided with his father between July and October 2008, before he departed to the Dominican Republic to continue his studies. The applicant returned to the United States in March 2009. The AAO notes that the applicant's mother was and continues to reside in the Dominican Republic. Nevertheless, the record contains a document, dated June 26, 2008, entitled "Transfer of Guardianship" whereby the applicant's mother assigns guardianship of the applicant to his father.

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 AAO notes that the applicant was born out of wedlock, and that his parents subsequently married each other. The applicant's parents' marriage, and the fact that his father's name is listed on his birth certificate, indicates that the applicant is his father's legitimate son. The AAO notes further that the record contains no evidence to suggest that the applicant's parents are divorced or legally separated.<sup>1</sup> Under 8 C.F.R. § 320.1, legal custody is presumed in "the case of a biological child born out of wedlock who has been legitimated and currently resides with the natural parent." The AAO again notes the applicant's mother's transfer of custody to his father as well as the applicant's testimony that he was residing with his father in the United States between July and October 2008. There is no indication in the record that the applicant abandoned his residence in the United States when he departed to continue his studies in October 2008, or that the applicant's father ceded custody of the applicant by virtue of his return to the Dominican Republic. The AAO finds that the applicant has established, by a preponderance of the evidence, that he was in his father's custody between July and October 2008.

The AAO notes that citizenship under section 320 of the Act, 8 U.S.C. § 1431, is automatically acquired upon fulfillment of the listed conditions. Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33), defines "residence" as "the place of general abode . . . [the] principal, actual dwelling place in fact, without regard to intent." The AAO finds that the applicant's residence was in his father's physical and legal custody prior to his 18<sup>th</sup> birthday. The AAO finds that the applicant automatically acquired U.S. citizenship when he resided in the United States with his father between July and October 2008.

The AAO reiterates that the record includes a copy of the applicant's U.S. passport. In *Matter of Villanueva*, 19 I&N Dec. 101 (BIA 1984), the Board of Immigration Appeals (Board) held that a valid U.S. passport is conclusive proof of U.S. citizenship. Specifically, the Board stated that:

unless void on its face, a valid United States passport issued to an individual as a citizen of the United States is not subject to collateral attack in administrative

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<sup>1</sup> The regulations, at 8 C.F.R. § 320.1, 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).

immigration proceedings but constitutes conclusive proof of such person's United States citizenship.

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 established that he was residing in the United States, as a lawful permanent resident, in the legal and physical custody of his U.S. citizen parent, prior to his 18<sup>th</sup> birthday. Thus, he has 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 sustained.

**ORDER:** The appeal is sustained.