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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



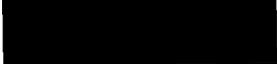
U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: MIAMI, FL

Date:

MAR 30 2010

IN RE:

Applicant:



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.

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 matter will be remanded to the director for action consistent with this decision.

The record reflects that the applicant was born on September 18, 1998 in Cuba. The applicant's parents are [REDACTED] and [REDACTED]. The applicant was admitted to the United States as a lawful permanent resident as of November 21, 2004, when the applicant was six years old. Her father became a U.S. citizen upon his naturalization on November 22, 1999, when the applicant was one year 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 she acquired U.S. citizenship through her father.

The field office director found that the applicant had failed to provide sufficient evidence in support of her claim. Specifically, the director noted that the applicant had not provided her parents' marriage certificate or evidence that she was in his father's legal or physical custody. The application was accordingly denied.

On appeal, the applicant's father maintains that he has been residing with the applicant and her mother. *See* Statement on Form I-290B, Notice of Appeal to the AAO. The appeal is accompanied by a notarized statement executed by the applicant's mother purporting to "give full authority" to make decisions with respect to the applicant to her father, effective June 22, 2009. *See* Notarized Statement by [REDACTED].

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, she 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 her father naturalized prior to her 18<sup>th</sup> birthday. The applicant's 18<sup>th</sup> birthday will be on September 18, 2016.

The applicant, in her Form N-600, Application for Certificate of Citizenship, noted that her parents were not married to each other at the time of her birth. The application further indicates that the applicant's father was married to someone other than the applicant's mother in 1969. The record does not contain a marriage or divorce decree, or evidence to establish that the applicant was in her 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, 41 (BIA 1970). The regulations provide that legal custody will be presumed "[i]n the case of a biological child born out of wedlock who has been legitimated and currently resides with the natural parent." 8 C.F.R. § 320.1 (defining "legal custody"). Legal custody also can be presumed "[i]n the case of a biological child who currently resides with both natural parents (who are married to each other, living in marital union, and not separated)." *Id.*

At issue in this case is whether the applicant can establish that she is in the legal and physical custody of a U.S. citizen parent. The record suggests that the applicant was born out of wedlock. The record does not contain evidence of the applicant's father's marriage or divorce, or evidence relating to the applicant's legal custody. However, the record indicates that the applicant was not residing with her father after her arrival in the United States. At the time of her adjustment of status, the applicant was residing with her mother in Miami. *See* Forms I-485 and G-325, submitted Jan. 3, 2006 and the Florida driver's license of the applicant's mother. On her Form N-600, the applicant also listed her mother's address as her own and listed a different address for her father. In a letter dated May 13, 2009, the applicant's father stated that the applicant has "always lived with her natural birth mother . . . since her arrival to this country," although he has supported her financially. On appeal, the applicant's father asserts that he "made a mistake" and states that he has been living with the applicant and her mother since the applicant's arrival in the United States. However, the applicant's father submits no evidence to support his claim that the applicant has been in his physical custody.

Nonetheless, the record contains a copy of the applicant's U.S. passport issued on March 6, 2008 and valid to March 5, 2013. 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 held in *Matter of Villanueva* 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 immigration proceedings but constitutes conclusive proof of such person's United States citizenship.

Nevertheless, a certificate of citizenship cannot be issued to the applicant where, as here, there are serious discrepancies between U.S. Citizenship and Immigration Services (USCIS) information and passport records. The USCIS Adjudicator's Field Manual at § 71.1(e) instructs that

An unexpired United States passport issued for 5 or 10 years is now considered prima facie evidence of U.S. citizenship. Because it does not provide the actual basis upon which citizenship was acquired or derived, the submission of additional documentation may be required or the passport file may be requested. If after review there are differences or discrepancies between the USCIS information and the Passport Office records which would indicate that the application should not be approved, no action should be taken until the Passport Office has an opportunity to review and decide whether to revoke the passport.

The matter must therefore be remanded to the director to request that the Passport Office review and decide whether to revoke the applicant's passport. The director shall issue a new decision once the Passport Office's review is completed and, if adverse to the applicant, certify the decision to the AAO for review.

**ORDER:** The matter is remanded to the director for action consistent with this decision and issuance of a new decision, which, if adverse to the applicant, shall be certified to the Administrative Appeals Office for review.