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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:

MAY 18 2010

IN RE:

Applicant:



APPLICATION:

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

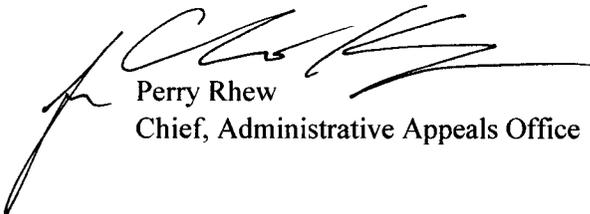
ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

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, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on September 4, 1994 in Cuba. The applicant's father, [REDACTED] became a U.S. citizen upon his naturalization on April 29, 2009. The applicant obtained lawful permanent resident status in the United States as of March 18, 2005. The applicant presently seeks a certificate of citizenship claiming that he acquired U.S. citizenship upon his father's naturalization.

The field office director denied the application upon finding that the applicant had not provided a copy of his parents divorce decree as requested. On appeal, the applicant's father submits a copy of his parents' divorce decree indicating that they were divorced in 2002.

The Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), which took effect on February 27, 2001, amended sections 320 and 322 of the Act, and repealed section 321 of the Act. The provisions of the CCA are not retroactive, and the amended provisions of section 320 and 322 of the Act apply 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, he is eligible for the benefits of the amended Act. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

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 in this case reflects that the applicant's father became a U.S. citizen in 2009, when the applicant was 14 years old. The applicant was admitted to the United States as a lawful permanent resident when he was 10 years old. The applicant therefore meets the requirements of sub-sections (1) and (2) of section 320 of the Act, as amended. The question remains whether the applicant can establish that he is residing in the United States in father's custody.

Legal Custody of the applicant can be presumed in 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 . . ." 8 C.F.R.

§ 320.1 (providing for the definition of “legal custody”). However, there “may be other circumstances under which the Service will find the U.S. citizen parent to have legal custody for purposes of the CCA.” *Id.* In this case, the applicant’s parents’ divorce decree does not contain a custody award or otherwise address the issue of custody. In derivative citizenship cases where the parents have legally separated but there is no formal, judicial custody order, the parent having “actual, uncontested custody” will 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-*, 3 I&N Dec. 850, 856 (Cent. Office 1950)). The record shows that the applicant has been residing with his father since his admission to the United States. Accordingly, the applicant is in his father’s actual, uncontested custody and he acquired U.S. citizenship upon his father’s naturalization pursuant to section 320 of the Act.

It is well established that “[t]here 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 these proceedings is on the claimant to establish the claimed citizenship by a preponderance of the evidence. 8 C.F.R. § 320.2. The applicant has met his burden and the appeal will therefore be sustained.

ORDER: The appeal is sustained.