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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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[REDACTED]

FILE:

[REDACTED]

Office: OAKLAND PARK, FL

Date:

SEP 27 2010

IN RE:

Applicant:

[REDACTED]

APPLICATION:

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

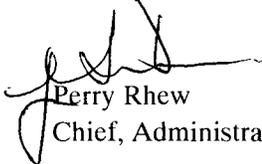
ON BEHALF OF APPLICANT:

[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.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Oakland Park, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on [REDACTED] in Venezuela. The applicant's parents are [REDACTED]. The applicant's father was born in Venezuela, but acquired U.S. citizenship at birth. The applicant's parents were married in 1988 and divorced in 1992. The applicant was admitted to the United States as a lawful permanent resident on August 4, 2006. The applicant presently seeks a certificate of citizenship claiming that she acquired U.S. citizenship through her father pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The field office director determined that the applicant did not automatically acquire U.S. citizenship because she was not in her father's legal custody. The application was accordingly denied.

On appeal, the applicant, through counsel, maintains, in relevant part, that she was in her father's legal custody upon her parents' divorce. *See* Appeal Brief. Specifically, the applicant notes that, although primary residential custody was awarded to her mother, her father shared in the *patria potestas*. The appeal is accompanied by documentary evidence relating to the applicant's and her father's residence, income, employment and immigration records.

The applicable law for derivative citizenship purposes is "the law in effect at the time the critical events giving rise to eligibility occurred." *See Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005). Section 320 of the Act, as amended by the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), provides for automatic acquisition of U.S. citizenship upon the fulfillment of certain conditions prior to a child's eighteenth birthday. The CCA, which took effect on February 27, 2001, is not retroactive, and applies 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, she 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, as amended, 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 establishes that the applicant is the child of a U.S. citizen and that she was admitted to the United States as a lawful permanent resident prior to her eighteenth birthday. The record further establishes that the applicant was residing in her father's physical custody after her admission to the United States. The AAO further finds that the applicant was in her father's legal custody as well.

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). Although the applicant's parents' divorce documents include a grant of "custody" to the applicant's mother, the documents also state that the *patria potestas* remains with both parents. *Patria Potestas* is the "responsibility to support and maintain family members." *Blacks Law Dictionary* (9th ed. 2009). The record also shows that the applicant's mother ceded "custody" of the applicant to her father in 2006. Accordingly, the preponderance of the evidence demonstrates that the applicant was in her parents' joint legal custody following her parents' divorce. The applicant's mother was awarded residential or physical custody upon the divorce, but ceded it to the applicant's father in 2006. Therefore, the applicant was in her father's legal custody as required by section 320(a)(3) of the Act.

The AAO further notes that the record contains a copy of the applicant's U.S. passport which constitutes conclusive proof of a U.S. citizenship and may not be collaterally attacked. *Matter of Villanueva*, 19 I&N Dec. 101 (BIA 1984).

The burden of proof is on the applicant to establish his claimed citizenship by a preponderance of the evidence. 8 C.F.R. §§ 320.3(b)(1) and 341.2(c). The applicant has met her burden of proof, and her appeal will be sustained. The matter will be returned to the Oakland Park Field Office for issuance of a certificate of citizenship.

ORDER: The appeal is sustained. The matter is returned to the Oakland Field Office for issuance of a certificate of citizenship.