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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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Date: APR 07 2011 Office: MIAMI, FL FILE: [REDACTED]

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:

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 remanded to the director for action consistent with this decision.

The record reflects that the applicant was born on June 19, 1990 in Cuba. The applicant was admitted to the United States as a lawful permanent resident on September 16, 1999. His father, [REDACTED] became a U.S. citizen upon his naturalization on August 15, 2000. The applicant's parents were married in 1986, and divorced in 1991. The applicant's mother was granted legal custody of the applicant upon the divorce. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, as amended by the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000).

The field office director denied the application finding that the applicant had failed to submit evidence to establish that he resided in his father's legal and physical custody prior to his eighteenth birthday, as is required by section 320 of the Act.

On appeal, the applicant submits his parents' marriage certificate, school records and a phone bill purporting to establish that he resided with his father before his eighteenth birthday.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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). The applicant was under 18 years old on the effective date of the CCA. Section 320 of the Act, as amended by the CCA, is therefore applicable to his case.

Section 320 of the Act provides, 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 was admitted to the United States as a lawful permanent resident in 1999 and his father naturalized in 2000. The applicant's eighteenth birthday was in 2008. At issue in this case is whether the applicant was residing in his father's legal and physical custody upon his parents' divorce and prior to his eighteenth birthday.

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 regulation at 8 C.F.R. § 320.1 defines legal custody as the “responsibility for and authority over a child.” Further, the regulation provides 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.” The regulation also states that “[t]here may be other factual circumstances under which the Service will find the U.S. citizen parent to have legal custody for purposes of the CCA.”

The record contains a copy of the applicant’s parents’ divorce judgment. The document is in the Spanish language and a translation has not been provided by the applicant as required by the regulation at 8 C.F.R. § 103.2(b)(3). It appears to contain a grant of “guardianship and care” to the applicant’s mother, but orders the *patria potestad* to remain with both parents.¹

The matter must be remanded to the director to determine, upon receipt from the applicant of the required translation, whether his parents’ divorce judgment grants “responsibility for and authority over” him to both parents. The director shall also determine whether physical custody was transferred to the applicant’s father upon the applicant’s immigration to the United States.² The director shall then issue a new decision which, if adverse to the applicant, shall be certified to the AAO for review.

ORDER: The matter is remanded to the Miami Field Office for action consistent with this decision.

¹ *Patria Potestas* is the “responsibility to support and maintain family members.” Blacks Law Dictionary (8th ed. 2004).

² There is evidence in the record suggesting that the applicant resided with his father after his immigration to the United States and before his eighteenth birthday.