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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

[redacted]

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FILE: [redacted] Office: NEW YORK, NEW YORK Date: FEB 14 2011

IN RE: [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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Application for Certificate of Citizenship (Form N-600) was denied by the District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in the Bahamas on April 27, 1993, to married parents The applicant's father is a U.S. citizen based on his naturalization on March 16, 2007. The applicant's mother was born in the Bahamas and is not a U.S. citizen. The applicant's parents divorced on June 30, 1995. The applicant was admitted to the United States as a lawful permanent resident on February 23, 2009.

The applicant filed Form N-600 on December 28, 2009, claiming that he derived U.S. citizenship from his father pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431. The director issued a Request for Evidence to provide the applicant with an opportunity to submit additional evidence in support of his claim. *See Request for Evidence*, dated Mar. 25, 2010. The applicant submitted additional documentation, which the director found insufficient to establish that he resided in his father's physical custody. *See Decision of the Director*, dated July 12, 2010. The application was denied accordingly. *Id.* On appeal, the applicant contends that he satisfied the applicable custody requirements. *See Form I-290B, Notice of Appeal*, filed August 5, 2010; *Statement in Support of Appeal.*

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Section 320(a) of the Act provides:

> 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.

Under the Act, "[t]he term 'residence' means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent." Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33).

The regulations define the term "legal custody" to refer to "the responsibility for and authority over a child." 8 C.F.R. § 320.1. In the case of divorced parents:

> a U.S. citizen parent [will be found] 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

> Service will consider a U.S. citizen parent who has been awarded "joint custody," to have legal custody of a child. There 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.

Id. In the absence of a judicial determination or a judicial or statutory grant of custody, "the parent having actual uncontested custody is to be regarded as having 'legal custody' of the person concerned for the purpose of determining that person's status[.] . . ." *Matter of M-*, 3 I&N Dec. 850, 856 (CO 1950) (determining "legal custody" under the derivative citizenship provision set forth in section 314(c) of the Nationality Act of 1940 and concluding that child who came to the United States to live with her father was in his father's legal custody).

Here, the applicant has not established that he is residing in the United States in the legal and physical custody of his father. Specifically, the record reflects that the applicant's parents divorced on June 30, 1995. *See Final Judgment Dissolving Marriage*, dated June 30, 1995. The divorce judgment makes no reference to "the primary care, control, and maintenance" of the applicant. *Id.* Accordingly, the applicant has not established that his father has been awarded legal custody over him as defined by the regulations at 8 C.F.R. § 320.1.

Given the absence of a judicial or statutory grant of custody, the applicant's father could be regarded as having legal custody over the applicant if he had actual physical custody of the applicant. *Matter of M-*, 3 I&N Dec. at 856. However, the facts in this case do not show actual physical custody. Specifically, the record reflects that the applicant's father resides in Brooklyn, New York. *See Statement of* [redacted] *in Support of Appeal*, at 6; *Income Tax Returns for Ans Bail*; *Financial Documents*. The applicant does not dispute that he resides and attends school in Sugar Land, Texas. *See Statement of Ans Bail Bumbokuri in Support of Appeal*, at 4; *Letter from* [redacted] dated May 27, 2010 (stating that the applicant's address of record is the [redacted] The letter from the applicant's school did not include the name of the parent/guardian as shown on school records, as requested in the director's March 25, 2010 Request for Evidence. The record also lacks any evidence that the applicant resides with his father for significant periods of time, for example, during school vacations.

Because the applicant's "place of general abode" is Sugar Land, Texas, and his father's "actual dwelling place in fact, without regard to intent," is in New York, the applicant does not reside in his father's physical custody. *See* Section 101(a)(33) of the Act. Accordingly, the applicant has not established that he resides in the legal and physical custody of his father, as required by the Act.

The applicant's father contends that he has established legal and physical custody over the applicant because: (1) he claims his son as a dependent on his income tax returns; and (2) both of them attended the Form N-600 interview together. *See Statement of* [redacted] *in Support of Appeal*. However, because the applicant does not reside with his father, and he has presented no evidence of an award of legal custody by a court or government entity, the applicant does not meet the legal and physical custody requirements.

The applicant must meet his burden of proof by establishing the claimed citizenship by a preponderance of the evidence. 8 C.F.R. § 320.3. Here, the applicant has not met this burden.

Accordingly, the applicant is not eligible for a certificate of citizenship under section 320 of the Act, and the appeal will be dismissed. This dismissal is without prejudice to the future filing of an Application for Naturalization (Form N-400).

ORDER: The appeal is dismissed.