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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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FILE:

Office: DALLAS, TEXAS

Date: FEB 18 2011

IN RE:

APPLICATION:

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

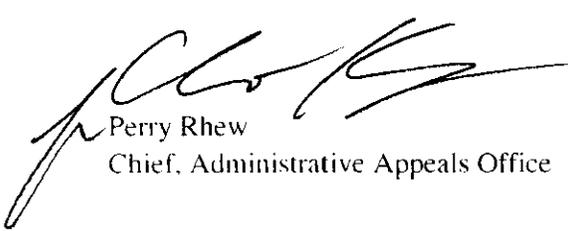
ON BEHALF OF APPLICANT:

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 (N-600) was denied by the Field Office Director, Dallas, Texas, 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 Mexico on December 6, 1985, to married parents [REDACTED]. The applicant's father was born in Mexico and is a U.S. citizen based on his naturalization on November 16, 1983. The applicant's mother was born in Mexico and is not a U.S. citizen. The applicant was admitted to the United States as a lawful permanent resident on January 14, 1986. The applicant's parents divorced on January 12, 1995. The applicant seeks a certificate of citizenship 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 determined that the applicant failed to establish that he was in his father's legal and physical custody, and denied the application accordingly. *See Decision of the Director*, dated July 19, 2010.<sup>1</sup> On appeal, the applicant contends through counsel that he satisfied the applicable custody requirements. *See Form I-290B, Notice of Appeal*, filed August 16, 2010; *Brief on Appeal*.

Section 320 of the Act, as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (CCA), applies to this appeal because the applicant was not yet 18 years old as of the February 27, 2001 effective date of the CCA. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 156 (BIA 2001) (en banc). 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:

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<sup>1</sup> The record reflects that the applicant filed his first Form N-600 on December 12, 2001. The director determined that the applicant was residing with his mother, and denied the application accordingly. *See Decision of the Director*, dated Sept. 28, 2002.

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.* Further, the term "joint custody" refers to:

the award of equal responsibility for and authority over the care, education, religion, medical treatment, and general welfare of a child to both parents by a court of law or other appropriate government entity pursuant to the laws of the state or country of residence.

*Id.*

Here, the applicant satisfied some of the requirements for derivative citizenship under section 320(a) of the Act before his eighteenth birthday. First, the applicant's father is a U.S. citizen by naturalization, satisfying section 320(a)(1) of the Act. Second, the applicant was admitted to the United States as a lawful permanent resident on January 14, 1986, when he was just over one month old. *See* section 320(a)(3) of the Act. Third, the evidence shows that the applicant's father retained legal custody over him as of the February 27, 2001 effective date of the CCA. Specifically, the applicant's parents' divorce decree appoints the applicant's father as his possessory conservator, with the duties of "care, control, protection, and reasonable discipline[.]" as well as "[t]he duty to provide the children with clothing, food, and shelter; and [t]he power to con[s]ent to medical and surgical treatment . . ." *Divorce Decree*, signed Jan. 20, 1995. Because this appointment of possessory conservatorship meets the definition of "legal custody" for children of divorced parents, *see* 8 C.F.R. § 320.1, the applicant has established that he remained in his father's legal custody after his parents' divorce.

The applicant claims that he also has satisfied the physical custody requirement in section 320(a)(3) of the Act because he continued to reside with both of his parents after their divorce in 1995. *See Brief on Appeal* at 3. In support of this contention, the applicant submits affidavits from family members and friends stating that the applicant's parents continued to live together as a couple after their divorce. *See, e.g.,* [REDACTED] dated Aug. 3, 2010 (stating that after the couple divorced, they decided to stay together as a family, and continued to live together until the present); [REDACTED] dated Aug. 3, 2010 (same).

However, the record indicates that the applicant's father married his third and current wife, [REDACTED], on April 28, 1995, in Dallas, Texas. *See Form N-600*, filed Apr. 7, 2010. The applicant has presented no evidence to explain the apparent inconsistency between his father's marital status and his claimed residence with the applicant and his mother. Additionally, although the applicant submitted various documents on appeal showing that his parents have claimed the same address from 2007 until the present, the record does not contain any contemporaneous documentation showing that the applicant and his father resided at the same address on February 27, 2001, the effective date of the CCA, or after that time while the applicant was under the age of 18.

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.

**ORDER:** The appeal is dismissed.