

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY

E 2

Date: JUL 12 2011

Office: HELENA, MT

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.

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 was denied by [REDACTED] and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on September 15, 1993 in Sudan. The applicant's parents, as indicated on his birth certificate, are [REDACTED]. The applicant was admitted to the United States as a lawful permanent resident as of January 22, 2004. The applicant's father became a U.S. citizen upon his naturalization on December 29, 2009. The applicant's mother became a U.S. citizen upon her naturalization on September 1, 2009. The applicant's parents were divorced in June 2006. The applicant seeks a certificate of citizenship claiming that he 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 provide evidence of his parents' divorce and therefore could not establish that he was residing in his father's legal custody as required by section 320 of the Act. On appeal, the applicant submits a copy of his parents' divorce decree.

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 born in 1993. Section 320 of the Act, as amended by the CCA, is 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 record indicates that the applicant was admitted to the United States as a lawful permanent resident in 2004. His father became a U.S. citizen in 2009. The applicant's parents were divorced in 2006, and the applicant claims that he has since been residing with his father.

The regulations provide that legal custody "refers to the responsibility for and authority over a child." See 8 C.F.R. § 320.1 (defining "legal custody"). Under the regulation, legal custody is

presumed “[i]n 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 pursuant to the laws of the state or country of residence.” The applicant’s parents’ divorce decree does not contain a custody award.

The regulation at 8 C.F.R. § 320.1 further provides, however, that “[t]here may be other factual circumstances under which [USCIS] will find the U.S. citizen parent to have legal custody for purposes of the CCA.” In this case, the only evidence in the record relating to the applicant’s physical custody is his father’s lease agreements. The applicant did not submit any school, tax or medical records indicating that he was in his father’s custody. There is no evidence in the record to warrant a finding that the applicant was in his father’s legal and physical custody following the applicant’s parents’ divorce. Accordingly, the applicant did not automatically acquire U.S. citizenship under section 320 of the Act.

The burden in these proceedings is on the applicant to establish eligibility for U.S. citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR §§ 320.2, 341.2. The applicant in this case has not met his burden of proof. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.