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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

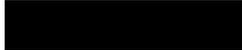
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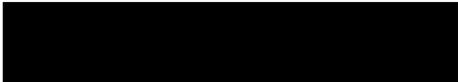


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Date: **JUL 18 2011**

Office: MIAMI, FL

FILE: 

IN RE: 

APPLICATION: Application for Certificate of Citizenship under section 320 of the Immigration and Nationality Act, 8 U.S.C. § 1431 (2001)

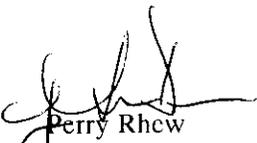
ON BEHALF OF PETITIONER:

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 for Certificate of Citizenship (Form N-600) was denied by the Acting Field Office Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born in Cuba on March 24, 1994. The applicant's parents, [REDACTED] were married on 1991 and divorced in 2002. The applicant was admitted to the United States as lawful permanent resident on August 30, 2003. The applicant's father became a U.S. citizen upon his naturalization on August 17, 2007. The applicant's mother naturalized on August 27, 2009. The applicant seeks a Certificate of Citizenship claiming that she automatically acquired U.S. citizenship upon her father's naturalization under 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 determined that the applicant failed to establish that she was residing in her father's physical custody, as is required by section 320(a)(3) of the Act. The application was denied accordingly.

On appeal, the applicant, through her father, contends that she has been residing with her father. See Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO. The applicant further states that her mother is now a U.S. citizen, and that she was included in her mother's income tax returns pursuant to an agreement between her parents and not because she was residing with her. *Id.*

The AAO conducts appellate review on a de novo basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Because the applicant was born abroad, he is presumed to be an alien and bears the burden of establishing his claim to U.S. citizenship by a preponderance of credible evidence. See *Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008).

The applicable law for derivative citizenship purposes is that in effect at the time the critical events giving rise to eligibility occurred. *Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005). The CCA, *supra*, amended sections 320 and 322 of the Act, and repealed section 321 of the Act. The provisions of the CCA apply to persons, like the applicant, who were not yet 18 years old as of February 27, 2001 (the CCA's effective date). See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Section 320 of the Act, as amended by the CCA, is therefore applicable in this 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 2003. Her father became a U.S. citizen upon his naturalization in 2007. U.S. Citizenship and Immigration Records confirm that the applicant's mother became a U.S. citizen upon her naturalization on August 27, 2009. The applicant's parents were divorced in 2002. The applicant's parents divorce decree provided for joint legal custody of the applicant, but residential custody was awarded to the applicant's mother. The evidence in the record is unclear with respect to the applicant's physical custody. A letter from the applicant's father suggests that the applicant has been residing with him, even though she is listed on her mother's income tax returns. In any case, because both parents naturalized prior to the applicant's eighteenth birthday, the applicant has automatically acquired U.S. citizenship pursuant to section 320 of the Act.

The AAO notes that the record contains a copy of the applicant's U.S. passport. In *Matter of Villanueva*, 19 I&N Dec. 101 (BIA 1984), the Board of Immigration Appeals (Board) held that a valid U.S. passport is conclusive proof of U.S. citizenship. Specifically, the Board held in *Matter of Villanueva* that:

unless void on its face, a valid United States passport issued to an individual as a citizen of the United States is not subject to collateral attack in administrative immigration proceedings but constitutes conclusive proof of such person's United States citizenship.

The burden of proof in these proceedings is on the claimant to establish the claimed citizenship by a preponderance of the evidence. See Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 320.3(b)(1). The applicant has met her burden of proof, and her appeal will be sustained. The matter will be returned to the Miami Field Office for issuance of a certificate of citizenship.

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