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

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PUBLIC COPY

U.S. Citizenship and Immigration Services

[redacted]

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OCT 18 2011

Date: 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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on May 15, 1989 in Cuba. The applicant's parents are The applicant's parents were married in 1994, and divorced in 2004. The applicant's mother became a U.S. citizen upon her naturalization on August 8, 2006, when the applicant was 17 years old. The applicant's father is not a U.S. citizen. The applicant was admitted to the United States as a lawful permanent resident as of July 24, 1995, when he was six years old. The applicant presently seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The field office director denied the applicant's claim finding that he had failed to provide the requested documentation to establish that he was in his mother's legal and physical custody.

On appeal, the applicant maintains that he acquired U.S. citizenship upon his mother's naturalization. *See* Statement Accompanying Form I-290B, Notice of Appeal to the AAO. The appeal is accompanied by a copy of his parents' Marital Settlement Agreement, the document previously requested by the field office director.

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 1990. Therefore, sections 320 and 322 of the Act as amended by the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), are 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 director denied the application because, although he submitted his parents' divorce decree, the applicant failed to submit the Marital Settlement Agreement. On appeal, the applicant submits this Agreement, which indicates that the applicant's mother was granted primary physical custody of the applicant upon the divorce. As the applicant has overcome the director's stated reasons for denying the petition, and has established his eligibility for a certificate of citizenship under section 320 of the Act, the appeal will be sustained.

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