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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**

E2

[REDACTED]

DATE: **SEP 29 2011**

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:

[REDACTED]

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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the director for action consistent with this decision.

The record reflects that the applicant was born on [REDACTED] 1990 in Cuba. The applicant's parents are [REDACTED] and [REDACTED]. The applicant's parents were married in Cuba on October 28, 1989 and divorced on March 20, 1992. The applicant's father became a U.S. citizen upon his naturalization on April 4, 2007. The applicant's mother is not a U.S. citizen. The applicant was admitted to the United States as a lawful permanent resident as of November 1, 2004. The applicant seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, based on the claim that he acquired U.S. citizenship through his father.

The field office director concluded that the applicant did not acquire U.S. citizenship because he had failed to establish that he was in his father's legal custody as is required by section 320(a)(3) of the Act. The director noted that the applicant's parents' divorce decree awarded primary residential care of the applicant to his mother. The application was accordingly denied.

On appeal, the applicant submits a copy of his U.S. passport, which was issued by the U.S. Department of State, Passport Office, on July 2, 2008. The applicant, through counsel, maintains that his parents shared legal custody over him following their divorce. *See* Statement of the Applicant on Form I-290B, Notice of Appeal, to the AAO. The applicant notes that he has been residing with his father since his admission to the United States in 2004.

Section 320 of the Act was amended by the Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), and took effect on February 27, 2001. The CCA benefits all persons who had not yet reached their eighteenth birthdays as of February 27, 2001. Because the applicant was under 18 years old on February 27, 2001, he meets the age requirement for benefits under the CCA.

Section 320 of the Act, 8 U.S.C. § 1431, states 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 AAO notes that the applicant's parents' divorce decree states that the applicant will "remain under the care and guardianship of the mother" upon the applicant's parents' divorce. See Applicant's Parents' Divorce Decree. Legal custody vests by virtue of "either a natural right or a court decree". See *Matter of Harris*, 15 I&N Dec. 39, 41 (BIA 1970). The regulations provide that legal custody will be presumed under the regulation at 8 C.F.R. § 320.1

[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 regulation further provides that a parent who is awarded "joint custody" will be deemed to have legal custody of a child. 8 C.F.R. § 320.1. Moreover, the regulation states that "[t]here 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.*

The AAO cannot find that the applicant was in his father's legal custody in the face of the "care and guardianship" award in the applicant's parents' divorce decree.

The AAO notes, however, that the applicant is the bearer of a U.S. passport issued in 2008. 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.

Where, as here, the applicant has failed to establish statutory eligibility for U.S. citizenship, a Certificate of Citizenship cannot be issued. The U.S. Citizenship and Immigration Services (USCIS) Adjudicator's Field Manual at § 71.1(e)(1) states:

An unexpired United States passport issued for 5 or 10 years is now considered prima facie evidence of U.S. citizenship. Because it does not provide the actual basis upon which citizenship was acquired or derived, the submission of additional documentation may be required or the passport file may be requested. If after review there are differences or discrepancies between the USCIS information and the Passport Office records which would indicate that the application should not be approved, no action should be taken until the Passport Office has an opportunity to review and decide whether to revoke the passport.

The matter must therefore be remanded to the field office director to request that the Passport Office review and decide whether to revoke the applicant's passport. The director shall issue a new decision once the Passport Office's review is completed and, if adverse to the applicant, certify the decision to the AAO for review.

**ORDER:** The matter is remanded to the director for action consistent with this decision. The director shall issue a new decision once the Passport Office's review is completed and, if adverse to the applicant, certify the decision to the AAO for review.