

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office

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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[Redacted]

Date: JUN 08 2012

Office: KENDALL, FL

[Redacted]

IN RE:

[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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Kendall, Florida, and 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 November 1, 2000 in Cuba. The applicant's parents, [REDACTED] and [REDACTED], were married on December 25, 1998 and divorced on March 22, 2007. The applicant's mother became a U.S. citizen upon her naturalization on July 27, 2011, when the applicant was ten years old. The applicant's father is not a U.S. citizen. The applicant was admitted to the United States as lawful permanent resident on May 13, 2010, when the applicant was 9 years old. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship upon his mother's naturalization 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's parent's divorce decree awarded custody of the applicant to his father, and that the applicant was residing with his mother. Thus, the director concluded that the applicant was not residing in the legal and physical custody of his U.S. citizen mother such that he could acquire U.S. citizenship upon her naturalization.

On appeal, the applicant, through counsel, maintains that his parent's divorce decree grants *patria potestad* to both parents. See Appeal Brief. The applicant further states that he resided in his mother's physical custody, as evidenced by the child support order and payments made by his father to his mother. *Id.*

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 under 18 years of age on the effective date of the CCA, February 27, 2001. Thus, 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 applicant was admitted to the United States as a lawful permanent resident in 2010. His mother became a U.S. citizen upon her naturalization in 2011. The applicant's parents were divorced in 2007. The applicant's father is not a U.S. citizen.

The applicant has thus established that he was admitted to the United States as a lawful permanent resident and that his mother naturalized prior to his eighteenth birthday. At issue in this case is whether the applicant can establish that he is residing in the United States in the legal and physical custody of his U.S. citizen mother.

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."

Although the applicant's parents' divorce document includes a grant of "guardianship and care" to the applicant's father, the document also states that the *patria potestad* remains with both parents. *Patria Potestad* is the "responsibility to support and maintain family members." Black's Law Dictionary (8th ed. 2004). Accordingly, the record demonstrates that the applicant was in his parents' joint legal custody following his parents' divorce.

The record further indicates that the applicant has been residing with his mother, as evidenced by school and tax records, the 2010 child support order, as well as the applicant's parents' affidavits. Accordingly, the preponderance of the evidence establishes that the applicant is residing in his U.S. citizen mother's physical and legal custody and therefore met the requirements for automatic acquisition of U.S. citizenship under section 320 of the Act.

"There must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." *Fedorenko v United States*, 449 U.S. 490, 506 (1981). 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 met this burden. Accordingly, the appeal will be sustained. The matter will be returned to the Kendall Field Office for issuance of a certificate of citizenship.

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