

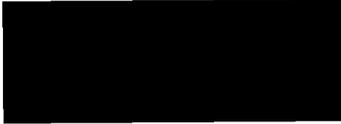
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



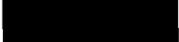
U.S. Citizenship  
and Immigration  
Services



E2

Date: MAR 02 2012

Office: OAKLAND PARK, FL

FILE: 

IN RE: 

APPLICATION: Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act, 8 U.S.C. § 1433.

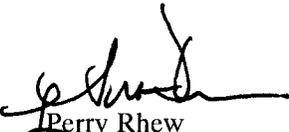
ON BEHALF OF PETITIONER:

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 Field Office Director, Oakland Park, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The director's decision shall be withdrawn and the matter remanded for entry of a new decision.

The record reflects that the applicant was born in Venezuela on [REDACTED] 1993. The applicant's parents, [REDACTED] and [REDACTED] were married at the time of his birth and divorced in 2002. The applicant was admitted to the United States as lawful permanent resident on September 3, 2009, when he was 15 years old. The applicant's father became a U.S. citizen upon his naturalization on June 24, 2008, when the applicant was 14 years old. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship through his father.

The field office director determined that the applicant failed to establish eligibility for derivative citizenship under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431 (repealed), because the applicant was not in his father's legal custody.

On appeal, the applicant contends that his mother ceded custody to his father in 2006. The appeal is accompanied by a copy of a sworn and notarized statement executed by the applicant's mother purporting to transfer custody of the applicant to his father.

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 the 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); *accord Jordon v. Attorney General*, 424 F.3d 320, 328 (3d Cir. 2005). The applicant was born in 1993 and was under the age of 18 on the effective date of the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000). The CCA amended sections 320 and 322 of the Act, 8 U.S.C. §§ 1431 and 1433, and repealed former section 321, 8 U.S.C. § 1432. Therefore, section 320 of the Act, as amended by the CCA, is applicable to 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's father became a U.S. citizen in 2008, and the applicant was admitted to the United States as a lawful permanent resident in 2009. The applicant's parents were married in 1998 and divorced in 2002. The applicant's custody and primary residence was awarded to his mother upon the divorce, though the divorce decree states that "parental responsibility will be shared." The applicant's mother is not a U.S. citizen.

As the director erroneously considered the applicant's eligibility for U.S. citizenship under former section 321 of the Act, her decision must be withdrawn and the matter remanded for entry of a new decision. Upon remand, the director must provide the applicant an opportunity to submit evidence that he was in his father's physical custody as required by section 320(a)(3) of the Act before entering a new decision into the record. If the applicant is found ineligible for citizenship under section 320 of the Act, the director shall certify her decision to the AAO for review.

**ORDER:** The director's decision is withdrawn and the matter remanded for entry of a new decision, which if adverse to the applicant, shall be certified to the AAO for review.