

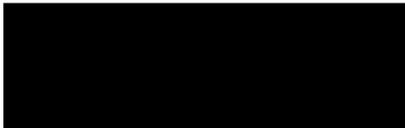
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

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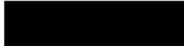
U.S. Citizenship
and Immigration
Services



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Date: **MAR 15 2012**

Office: NEW YORK, NY

FILE: 

IN RE: 

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

ON BEHALF OF APPLICANT:

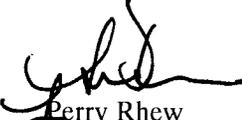


INSTRUCTIONS:

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The District Director, New York, New York, denied the Application for Certificate of Citizenship (Form N-600) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in wedlock in Brazil on July 4, 1992. The applicant was admitted to the United States as a lawful permanent resident on October 2, 2004. The applicant's mother became a U.S. citizen by naturalization on October 16, 2009. The applicant's father is not a U.S. citizen. The applicant seeks a certificate of citizenship claiming that he derived U.S. citizenship from his mother pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The district director determined that the applicant failed to establish eligibility for derivative citizenship under section 320 of the Act because he failed to demonstrate that he has resided in the physical and legal custody of his U.S. citizen mother. The district director denied the application accordingly. *See Decision of the District Director*, dated February 28, 2011. On appeal, counsel contends that the applicant is eligible for derivative citizenship. *See Form I-290B, Notice of Appeal*, dated March 31, 2011.

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). Section 320 of the Act, as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (CCA), applies to this case because the applicant was not yet over the age of eighteen years on February 27, 2001, the effective date of the CCA. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 156 (BIA 2001) (en banc). Section 320(a) of the Act, 8 U.S.C. § 1431(a), provides:

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 regulations define the term "legal custody" to refer to "the responsibility for and authority over a child." 8 C.F.R. § 320.1. In the case of divorced parents:

a U.S. citizen parent [will be found] to have legal custody of a child, for the purpose of the CCA, 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

Service will consider a U.S. citizen parent who has been awarded "joint custody," to have legal custody of a child. There 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. In the absence of a judicial determination or a judicial or statutory grant of custody, the parent having actual uncontested custody is to be regarded as having "legal custody" of the child. See *Matter of M-*, 3 I&N Dec. 850, 856 (CO 1950).

Here, the applicant meets the first two requirements set forth in section 320(a) of the Act. First, the applicant's mother became a citizen of the United States by naturalization when the applicant was 17 years old. See *Certificate of Naturalization for [REDACTED]* dated October 16, 2009. Second, the applicant has been residing in the United States pursuant to a lawful admission for permanent residence since October 2, 2004. See *Lawful Permanent Resident Card of [REDACTED]*. However, while the record reflects that the applicant has been residing in the physical custody of his U.S. citizen mother, the applicant has failed to establish that he has been residing in the legal custody of his mother after his mother became a U.S. citizen and prior to July 4, 2010, the date on which the applicant reached the age of eighteen years. See *Marriage Certificate for [REDACTED]* (noting divorce); and *School Records for [REDACTED]* (indicating that the applicant resides at the same address as his mother and that the applicant's mother is listed as his Parent). The record reflects that the applicant's parents were divorced on July 10, 2000; however, the record does not contain a copy of the actual divorce judgment. A copy of the divorce judgment is necessary in order to determine whether there was a judicial determination or statutory grant of custody in regard to the applicant.

On appeal, counsel contends that the applicant's parents were divorced on July 20, 2000 and that the applicant's mother was granted custody of the applicant following the divorce. Counsel contends that the applicant's mother was unable to obtain a certified copy of the divorce judgment from the Brazilian courts because the case had been closed for more than ten years. In support of her contentions, counsel submits an affidavit from a notary public stating that the applicant's mother was unable to reopen the divorce case. The statement does not indicate that the applicant's mother was unable to obtain a copy of the original judgment. Moreover, in reviewing the record, the applicant's parents' divorce judgment is registered in conjunction with their marriage certificate. The marriage certificate, issued by the official civil registry of sub-district Pirituba, indicates that the applicant's parents were granted a divorce on July 10, 2000, and that the record of the divorce was attached to the marriage record on July 19, 2000. As such, the applicant would be able to obtain a copy of the divorce judgment from the official civil registry of the sub-district Pirituba as well as from the court which issued the judgment. Counsel also submits statements from the applicant's father in which he states that he has given the applicant's mother full power and custody over the applicant. The affidavit from the notary and the statements from the applicant's father are insufficient evidence of whether the applicant's mother had legal custody of the applicant during the period in question.

Accordingly, the applicant has not established that he resided in the legal and physical custody of his mother, as required for him to derive citizenship through his mother under section 320(a) of the Act.

The applicant must meet his burden of proof by establishing the claimed citizenship by a preponderance of the evidence. Section 341(a) of the Act; 8 U.S.C. § 1452; 8 C.F.R. § 320.3. Here, the applicant has not met this burden. Accordingly, the applicant is not eligible for a certificate of citizenship under section 320 of the Act, and the appeal will be dismissed.

ORDER: The appeal is dismissed.