



**U.S. Citizenship  
and Immigration  
Services**

(b)(6)

Date: **APR 26 2013**

Office: ST. PAUL, MN

FILE: [REDACTED]

IN RE:

Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Former Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (repealed).

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:

Thank you,



Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, St. Paul, Minnesota. The matter came before the Administrative Appeals Office (AAO) on appeal. The appeal was dismissed. The applicant timely filed a motion to reopen. The motion will be granted, the AAO's decision dated May 9, 2012 will be withdrawn and the appeal will be sustained.

The record reflects that the applicant was born on [REDACTED] in Barbados. The applicant's parents, as reflected in his birth certificate, are [REDACTED] and [REDACTED]. The applicant's parents were married in 1965, and divorced in 1978. The applicant's father became a U.S. citizen upon his naturalization on June 26, 1984, when the applicant was 12 years old. The applicant was admitted to the United States as a lawful permanent resident in 1987, when he was 15 years old. The applicant seeks a certificate of citizenship claiming that he automatically derived U.S. citizenship through his father.

The field director determined that the applicant did not derive U.S. citizenship under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432 (1989), because he did not submit evidence that he was in his father's legal custody prior to his eighteenth birthday. The application was denied. The appeal of the denial was dismissed by the AAO upon concluding that the applicant had failed to establish that he was in his father's actual, uncontested custody.

The applicant, through counsel, now seeks reopening of the matter. In support of his motion to reopen, the applicant submits, in relevant part, his high school transcript indicating that he was a student in the Chicago Public Schools from 1986 to 1989 and listing his father as his guardian. According to the regulation at 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by documentary evidence. The applicant's instant motion meets the regulatory requirements of a motion to reopen and will therefore be granted.

As noted in the AAO's May 9, 2012 decision, the applicable law for derivative citizenship purposes is "the law in effect at the time the critical events giving rise to eligibility occurred." *Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9<sup>th</sup> Cir. 2005). Former section 321 of the Act is applicable in the applicant's case.<sup>1</sup>

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<sup>1</sup> Former section 321 of the Act, stated, in pertinent part, that:

(a) A child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:

- (1) The naturalization of both parents; or
- (2) The naturalization of the surviving parent if one of the parents is deceased; or
- (3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if the child was born out of wedlock and the paternity of the child has not been established by legitimation; and if-
- (4) Such naturalization takes place while said child is under the age of 18 years; and
- (5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (1) of this subsection, or the parent naturalized under clause (2) or (3) of this

At issue in this case is whether the applicant can establish that he was in his father's legal custody after his parents' divorce. 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 applicant's parents' divorce decree does not include a custody order. See Divorce Decree. In cases where the parents have legally separated but there is no formal, judicial custody order, the parent having "actual, uncontested custody" will be regarded as having "legal custody" of the child. *Bagot v. Ashcroft*, 398 F.3d 252, 266-67 (3d Cir. 2005) (citing *Matter of M-*, 3 I&N Dec. 850, 856 (Cent. Office 1950)). The record establishes that the applicant immigrated to the United States on the basis of an approved alien relative petition filed by his father. The applicant's immigrant visa application stated that his purpose in going to the United States was to reunite with his father. The applicant's immigrant visa and alien registration list his father's address at the time. The applicant's mother stated in writing at the time that she had no objection to the applicant's immigration and reunification with his father in the United States. The AAO finds, on the basis of the evidence in the record including his recently submitted high school transcript and his father's 1987 tax returns listing the applicant as a dependent, that the applicant's father had actual, uncontested custody of the applicant following the applicant's parent's 1978 divorce. Thus, the applicant derived U.S. citizenship upon his father's naturalization.

"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 burden of proof in citizenship cases is on the claimant to establish the claimed citizenship by a preponderance of the evidence. See Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2. The applicant has met his burden of proof, and his appeal will be sustained. The matter will be returned to the USCIS St. Paul Field Office for issuance of a certificate of citizenship.

**ORDER:** The matter is reopened. The AAO's May 9, 2012 decision is withdrawn. The appeal is sustained and the matter is returned to the USCIS St. Paul Field Office for issuance of a certificate of citizenship.

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subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.