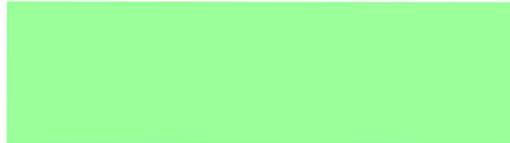


(b)(6)

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



U.S. Citizenship
and Immigration
Services

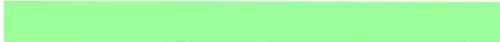


Date: AUG 06 2013

Office: MIAMI, FL

FILE: 

IN RE:

Applicant: 

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Miami, 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 [REDACTED] in Cuba. The applicant's parents, [REDACTED] were married in 2002 and divorced in 2004. The applicant's father became a U.S. citizen upon his naturalization on September 21, 2011, when the applicant was 16 years old. The applicant's mother is not a U.S. citizen. The applicant was admitted to the United States as lawful permanent resident on May 2, 2011, when he was 16 years old. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship upon his father'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 was not residing in the legal and physical custody of his U.S. citizen father from the date of his naturalization until the applicant's eighteenth birthday.

On appeal, the applicant maintains that he was residing with his father since his arrival in the United States. The appeal is accompanied by income tax returns, utility bills, and correspondence indicating that the applicant's and his father's address is the same.

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 record indicates that the applicant was admitted to the United States as a lawful permanent resident and that his father naturalized in 2011, when the applicant was 16 years old. The applicant's parents were divorced in 2004, but the divorce document does not contain a custody

order. 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 father.

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.”

The applicant’s parents’ divorce document does not include a custody award. In derivative citizenship 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)). Additionally, the regulation at 8 C.F.R. § 320.1 provides that “[t]here may be other factual circumstances under which [USCIS] will find the U.S. citizen parent to have legal custody for purposes of the CCA.”

In this case, the record indicates that the applicant was residing with his father after his admission to the United States. The evidence submitted includes the applicant’s father’s 2010, 2011 and 2012 income tax returns, as well as correspondence addressed to the applicant at his father’s address. The record also includes the applicant’s immigration documents, listing his father’s address. The AAO notes that the statute does not require that the applicant establish that he resided with his father for any particular amount of time, only that he demonstrate that he was in his father’s legal and physical custody prior to his eighteenth birthday. The AAO finds that the record establishes, by a preponderance of the evidence, that the applicant was residing in his father’s legal and physical custody as is required under section 320 of the Act.

In application proceedings, it is the applicant’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

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