(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 2 3 2013 OFFICE: MIAMI, FL 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:

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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Form N-600, Application for Certificate of Citizenship (Form N-600) was denied by the Field Office Director, Miami, Florida (the director), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born in Venezuela on January 14, 1994, to married parents. He was admitted into the United States as a lawful permanent resident on November 30, 2001, when he was seven years old. His parents divorced on January 30, 2003, when the applicant was nine years old. The applicant's mother became a naturalized U.S. citizen on December 20, 2007, when the applicant was 12 years old. His father is not a U.S. citizen. The applicant seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, based on the claim that he derived U.S. citizenship through his naturalized U.S. citizen mother.

In a decision dated February 13, 2013, the director determined that the applicant had failed to establish that he resided in his mother's legal and physical custody at the time of her naturalization, and prior to the applicant's 18th birthday, as required by section 320 of the Act. The application was denied accordingly.

On appeal, the applicant indicates that he has satisfied the legal and physical custody requirements contained in section 320 of the Act. In support of his assertions, the applicant submits a letter from his mother and father. The record also contains the applicant's parents' final divorce judgment, school transcripts, and federal income tax information.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ,* 381 F.3d 143, 145 (3d. Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

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 matter because the applicant was not yet 18 years old as of the February 27, 2001 effective date of the CCA. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 156 (BIA 2001).

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.

Under the Act, "[t]he term 'residence' means the place of general abode; the place of general

abode of a person means his principal, actual dwelling place in fact, without regard to intent." Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33).

Legal custody vests "[b]y virtue of either a natural right or a court decree." *Matter of Harris,* 15 I&N Dec. 39, 41 (BIA 1970). In the absence of a judicial determination or grant of custody in a case of a legal separation of the naturalized parent, the parent having actual, uncontested custody of the child is to be regarded as having "legal custody". *See Matter of M,* 3 I&N Dec. 850, 856 (BIA 1950).

The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. The "preponderance of the evidence" standard requires that the record demonstrate that the applicant's claim is "probably true," based on the specific facts of each case. *Matter of Chawathe,* 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-,* 20 I&N Dec. 77, 79-80 (Comm. 1989)). Even where some doubt remains, an applicant will meet this standard if she or he submits relevant, probative and credible evidence that the claim is "more likely than not" or "probably" true. *Id.* (citing *INS v. Cardoza-Fonseca,* 480 U.S. 421, 431 (1987)).

To establish that he resided in his mother's legal and physical custody after December 20, 2007, when she became a naturalized U.S. citizen, and prior his 18th birthday on January 14, 2012, the applicant submits a February 22, 2013, letter from his parents stating that they shared custody over the applicant, and that the applicant has lived with his mother since their divorce in January 2003.

The record also contains the applicant's parents' January 30, 2003, "Final Judgment of Dissolution of Marriage with Minor Children" from the Eleventh Judicial Circuit Court in Miami, Florida. The judgment refers to a marital settlement agreement between the applicant's parents (referred to as "Exhibit A") and the court ratifies and makes the settlement agreement part of the applicant's parent's final divorce judgment. The judgment does not include the terms of the marital settlement between the parties, and it does not contain information about legal and physical custody arrangements for the applicant. It is noted that on October 29, 2012, the Miami field office sent a Request for Evidence to the applicant, asking him to submit his parents' divorce decree with marital settlement or custody order information; however, the evidence was not provided.

Federal income tax return information contained in the record reflects that the applicant's mother claimed the applicant as her dependent between 2002 and 2008, and in 2011. The record also contains the applicant's school record information between 1999 and 2011, indicating that he lived at in Miami, Florida for the entire school history period, and listing both of the applicant's parents' names, and the name of a legal guardian,

Upon review, the AAO finds that the applicant has failed to establish, by a preponderance of the evidence, that he resided in the legal and physical custody of his U.S. citizen mother between December 20, 2007, when she became a naturalized U.S. citizen, and January 14, 2012, when he turned 18.

In ascertaining the evidentiary weight of affidavits, the Service must determine the basis for the affiant's knowledge of the information to which he is attesting; and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record. *Matter of*

E-M-, 20 I&N Dec. 77 (Comm. 1989). In the present matter, the evidence in the record fails to corroborate the applicant's parents' statement that they shared custody over the applicant, and that he has lived with his mother since their divorce in January 2003. The letter therefore has diminished evidentiary weight. Notably, the record does not contain the applicant's parents' marital settlement agreement or custody order for the applicant, and the record contains no documentary evidence to establish whether legal or physical custody was awarded to the applicant's mother after his parents' divorce. Furthermore, the school transcript evidence contained in the record does not establish with whom the applicant lived while he attended school. In addition, the place of residence listed on all of the applicant's school records differs from addresses listed on all of the federal income tax returns filed by the applicant's mother. The address listed on the applicant's Form N-600, signed on November 17, 2011, also differs from the addresses listed on his mother's federal income tax returns, and the record contains no other documentary evidence to demonstrate that the applicant resided with his mother during the relevant time periods.

The burden of proof is on the applicant to establish his claimed citizenship by a preponderance of the evidence. 8 C.F.R. § 341.2(c). Because the applicant has not met his burden of proof, the appeal will be dismissed.

ORDER: The appeal is dismissed.