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

(b)(6)

U.S. Citizenship and Immigration Services

Date: NOV 15 2013 Office: ORLANDO, 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. 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 application was denied by the Field Office Director, Orlando, Florida, 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 on April 20, 1995 in Colombia. The applicant's parents, were married in 1977. The applicant's father became a U.S. citizen upon his naturalization on September 16, 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 as of August 10, 2006, when she was 11 years old. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship upon her 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 failed to establish that she was residing in the physical custody of her U.S. citizen father when he naturalized. On appeal, the applicant states that she would submit additional school records listing his name and address. The applicant submitted her school transcript.

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 her 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 eighteenth birthday was on April 20, 2013. At issue in this case is whether the applicant can establish that she was residing in the United States in the legal and physical custody of her 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] biological child who currently resides with both natural parents (who are married to each other, living in marital union, and not separated)."

The applicant's parents' were married in 1977. The record contains a letter from indicating the applicant's enrollment in 2012, and her transfer from a school in Florida. The applicant's father's naturalization certificate and driver's license indicate that he was residing in Florida. Her high school transcript, prepared on January 14, 2013, lists her father's name as well as an address in Florida. The applicant's current residential address is in The record does not contain any lease agreement, correspondence, income tax returns, employment or medical records, or any other documentation relevant to the question of the applicant's legal and physical custody.

The record does not establish, by a preponderance of the evidence, that the applicant is residing in her father's custody. The statute does not require that the applicant establish that she has resided with her father for any particular amount of time, only that she demonstrate that she has been in her father's legal and physical custody after his naturalization and prior to her eighteenth birthday.

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 not been met.

ORDER: The appeal is dismissed.