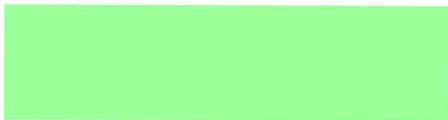




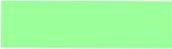
U.S. Citizenship
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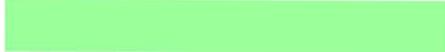
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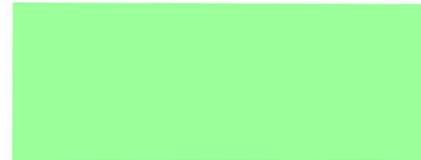
OFFICE: CHICAGO, IL

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 (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, Chicago, Illinois (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 Mexico to unmarried parents on June 30, 1985. His father became a naturalized U.S. citizen on October 16, 1992, when the applicant was seven years old. His mother is not a U.S. citizen. The applicant was admitted into the United States as a lawful permanent resident on September 8, 1993, when he was eight years old. He presently 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 father.

In a decision dated January 18, 2013, the director determined that the applicant had failed to establish he resided in his father's legal and physical custody at the time section 320 of the Act became effective, and prior to the applicant's 18th birthday. The application was denied accordingly.

On appeal the applicant asserts, through counsel, that he has met his burden of establishing that he meets the legal and physical custody requirements contained in section 320 of the Act. In support of these assertions, the record contains affidavits from the applicant's parents, federal income tax return evidence, and medical documentation for the applicant.

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 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), provides for automatic acquisition of U.S. citizenship upon the fulfillment of certain conditions prior to a child's 18th birthday. The CCA, which took effect on February 27, 2001, is not retroactive, and applies only to persons who were not yet 18 years old as of February 27, 2001. Because the applicant was under the age of 18 on February 27, 2001, section 320 of the Act applies to his U.S. citizenship claim. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (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.

Because the CCA is not retroactive, the applicant must establish that he met section 320 of the Act requirements on, or after February 27, 2001, and prior to his 18th birthday on June 30, 2003.

Further, for naturalization and citizenship purposes, the term “child” means:

an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child’s residence or domicile, or under the law of the father’s residence or domicile, whether in the United States or elsewhere. . . if such legitimation . . . takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating . . . parent or parents at the time of such legitimation

Section 101(c) of the Act, 8 U.S.C. § 1101(c)(1).

In the present matter, the applicant was legitimated under the law in Illinois, his father’s place of residence, prior to his 16th birthday. Illinois Compiled Statutes (ILCS) provide at 750 ILCS chapter 45, section 2:

Parent and Child Relationship Defined. As used in this Act, ‘parent and child relationship’ means the legal relationship existing between a child and his natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship. (Source: [Illinois Parentage Act,] P.A. 83-1372.)

750 ILCS 45/3 provides:

Relationship and Support Not Dependent on Marriage. The parent and child relationship, including support obligations, extends equally to every child and to every parent, regardless of the marital status of the parents. (Source: P.A. 83-1372.)

The applicant therefore meets the legitimation requirements set forth in section 101(c). The applicant has failed, however, to establish that he met section 320(a)(3) of the Act custody requirements on, or after February 27, 2001, and prior to his 18th birthday on June 30, 2003.

The regulations define the term “legal custody” for section 320 of the Act purposes, to refer to “the responsibility for and authority over a child.” 8 C.F.R. § 320.1.

For the purpose of the CCA, the Service will presume that a U.S. citizen parent has legal custody of a child, and will recognize that U.S. citizen parent as having lawful authority over the child, absent evidence to the contrary, in the case of . . . a biological child born out of wedlock who has been legitimated and currently resides with the natural parent.

(b)(6)

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Id.

Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33), provides that, “[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.”

In the present matter, the record contains a June 11, 2012 “Affidavit acknowledging paternity” from the applicant father, stating that he received custody over the applicant in September 1986. Additional affidavits, signed by the applicant’s parents on January 19, 2012 and June 11, 2012, state that the applicant’s mother gave legal custody of the applicant to his father in September 1986, and that the applicant lived with his father since that time. The applicant’s mother indicates in both affidavits that her address is: [REDACTED]. The applicant’s father does not list an address on the June 11, 2012 affidavit. He states on the January 19, 2012 affidavit that his address is: [REDACTED].

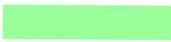
The applicant’s father also lists the applicant as his dependent on federal income tax return forms filed in 1987, 1988, and 1989, and he indicates on the tax returns that the applicant lived with him for 12 months of each year. The home address listed on the federal income tax return forms is: [REDACTED].

A Form I-130, Petition for Alien Relative (Form I-130) filed by the applicant’s father in 1992, on behalf of the applicant, reflects that the applicant’s father’s address is: [REDACTED]. The record also contains medical bills for care received by the applicant in 1994 and 1999, sent to the applicant’s father at: [REDACTED].

It is noted that the applicant’s father states on the Form I-130 filed in 1992, that the applicant’s address is: [REDACTED] rather than at: [REDACTED]. The applicant’s father also states that the applicant’s intended address upon immigration to the United States is: [REDACTED]. In addition, Illinois circuit court and criminal arrest history documentation contained in the record reflects that the applicant resided at: [REDACTED] (his mother’s address), in 2004, 2005 and 2008.

Upon review, the AAO finds that the evidence in the record fails to establish that the applicant resided in the legal and physical custody of his U.S. citizen father between February 27, 2001, the effective date of the CCA, and June 30, 2003, when the applicant turned 18. Tax and medical bill evidence pertains to time periods that occurred several years before the enactment of the CCA, and in the case of the tax evidence, to time periods that occurred before the applicant’s father became a naturalized citizen, or the applicant became a lawful permanent resident. Furthermore, Form I-130 residence information and criminal history evidence contained in the record materially conflict with affidavit assertions that the applicant lived with his father since September 1986.

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 applicant’s parents’ affidavits have diminished evidentiary weight, in that they lack material detail regarding dates and places



that the applicant lived, are uncorroborated by independent evidence in the record, and conflict with evidence in the record.

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.