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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: OCT 0 7 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 record reflects that the applicant was born in Haiti on January 29, 1996. Her parent's divorced in Haiti on July 26, 1996. The applicant was admitted into the United States as a lawful permanent resident on October 28, 2002, when she was six years old. Her father became a naturalized U.S. citizen on September 19, 2011, when the applicant was 15 years old. The applicant's mother is not a U.S. citizen. The applicant 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 she derived U.S. citizenship through her father.

The director determined that the applicant failed to submit sufficient evidence to establish that she qualified for U.S. citizenship under section 320 of the Act. The application was denied accordingly.

On appeal the applicant indicates that evidence, and translations of documentation submitted on appeal establish that she meets section 320 of the Act requirements for derivative citizenship. In support of the assertions, the record contains the applicant's birth certificate, a statement from the applicant's father, the applicant's parents' divorce decree, and English translations of the evidence.

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 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.

Here, the record contains naturalization certificate evidence establishing that the applicant's father became a naturalized U.S. citizen on September 19, 2011, when the applicant was 15. The record also reflects that the applicant was admitted into the United States as a lawful permanent resident on October 28, 2002, at the age of six. The requirements contained in section 320(a)(1) and (2) have therefore been met. The applicant has failed, however, to establish that she meets the requirements contained in section 320(a)(3) of the Act.

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. § 320.1 defines the term "legal custody" in part, by referring to "the responsibility for and authority over a child."

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).

A divorce decree contained in the record reflects that the applicant's parents were divorced in Haiti on July 26, 1996. The divorce decree does not address whether the applicant's parents have children, and does not address the issue of custody over children. The applicant's father indicates, in a statement submitted on appeal, that although Haitian courts determine which parent is most suitable for child custody purposes, the issue of child custody was not addressed during his divorce proceedings, and the court did not issue a settlement agreement or custody order at the time of his divorce, or subsequent to his divorce.

Because the applicant's parent's divorce decree does not address or contain a judicial determination or grant of custody for the applicant, the parent having actual, uncontested custody of the applicant shall be regarded as having legal custody. *See Matter of M,* 3 I&N Dec. 850, 856.

A review of the record reflects that the applicant's October 2002, immigrant visa application states that she intends to live at her father's address in Florida. The applicant's October 2012, Form N-600 also indicates that she and her father have the same address in Florida. The record contains no evidence, however, to demonstrate that the applicant resides with her citizen father, and that he has responsibility for, and authority over the applicant, and the applicant submits no evidence on appeal to establish such facts.

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)).

In the present matter, the applicant has failed to establish, by a preponderance of the evidence, that she resides in the United States in the legal and physical custody of her U.S. citizen parent, as required under section 320(a)(3) of the Act. The applicant has therefore failed to meet her burden of proof in this matter, and the appeal will be dismissed

ORDER: The appeal is dismissed.