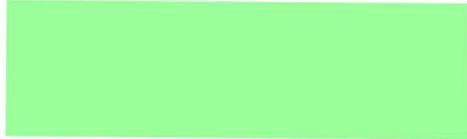




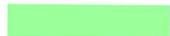
U.S. Citizenship
and Immigration
Services

(b)(6)

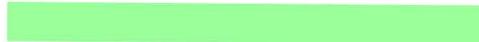


Date: **OCT 11 2013**

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
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 September 16, 1994 in Colombia. The applicant's parents, [REDACTED] and [REDACTED] were married in 1988 and divorced in 1997. The applicant's mother became a U.S. citizen upon her naturalization on December 17, 2010, when the applicant was 16 years old. The applicant's father is not a U.S. citizen. The applicant was admitted to the United States as lawful permanent resident as of November 21, 2005, when she was 10 years old. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship upon her mother'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 had failed to provide the requested documents to establish that she was in the legal and physical custody of her U.S. citizen mother.

On appeal, the applicant submits a copy of a document entitled "Settlement Hearing and Ruling" which includes her parents' judgment of divorce and custodial award.

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 her mother naturalized prior to her eighteenth birthday. The applicant's parents were divorced in 1997, and the "Settlement Hearing and Ruling" document submitted on appeal contains a custody order awarding custody of the applicant to her mother.

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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.”

In this case, the record indicates that the applicant was in her mother's legal and physical custody. She can therefore establish that she acquired U.S. citizenship automatically upon her naturalization pursuant to 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.