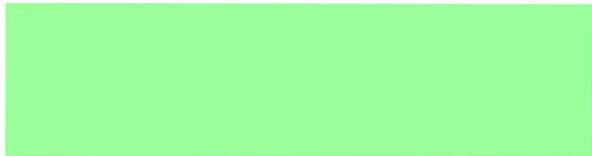




U.S. Citizenship
and Immigration
Services

(b)(6)

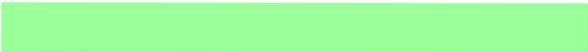


Date: **OCT 16 2013**

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 (the director), Miami, Florida. 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 July 23, 2002 in Cuba. The applicant's parents are [REDACTED]. The applicant's parents were never married to each other. The applicant's father became a U.S. citizen upon his naturalization on December 17, 2010, when the applicant was eight years old. The applicant's mother is not a U.S. citizen. The applicant was admitted to the United States as a lawful permanent resident as of February 16, 2006. 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, claiming that he acquired U.S. citizenship through his father.

The director denied the application upon finding that the applicant had failed to respond to a request for evidence to establish that he was in his father's legal and physical custody, as required by section 320(a)(3) of the Act.

On appeal, the applicant submits school records and a lease agreement in support of his claim that he has been residing with his parents. See Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO.

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). 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), is applicable in this case.

Section 320 of the Act, as amended, states 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.

Section 101(c) of the Act, 8 U.S.C. § 1101(c) states, in pertinent part, that for Title III 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

The record shows that the applicant was born out of wedlock. At the outset, the AAO must determine if the applicant was legitimated under the law of the applicant's or his father's residence or domicile. Under Cuban law, children born after 1975 are deemed legitimate whether they are born in or out of wedlock. *See Matter of Martinez*, 18 I. & N. Dec. 399 (BIA 1983). Under the laws of the State of Florida, legitimation of a child can occur when the child's paternity is acknowledged in writing. *See* Section 732-108 of Florida Statutes (1992). The applicant was therefore legitimated for purposes of acquisition of citizenship.

The question remains, however, whether the applicant can establish that he was residing in his father's legal and physical custody prior to his eighteenth birthday. Legal custody vests by virtue of "either a natural right or a court decree". *See Matter of Harris*, 15 I&N Dec. 39, 41 (BIA 1970). The regulations provide that legal custody will be presumed "[i]n the case of a biological child born out of wedlock who has been legitimated and currently resides with the natural parent." 8 C.F.R. § 320.1 (defining "legal custody"). The Act defines the term "residence" as "the place of general abode . . . 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). There is evidence in the record to indicate that the applicant resided with his father during the relevant time period (after his father's naturalization). *See* Applicant's School Records and Lease Agreement. The applicant has therefore established that he was residing in the United States in the legal and physical custody of his U.S. citizen father.

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.