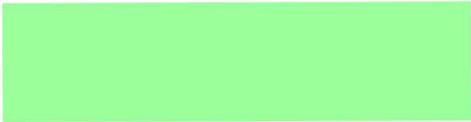




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: OCT 29 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:  


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 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 sustained.

The applicant was born in Colombia on March 23, 1993, to married parents. The applicant's parents divorced in Colombia on February 24, 1999, when the applicant was six years old, and physical custody over the applicant was awarded to his mother. The applicant's mother is not a U.S. citizen. His father became a naturalized U.S. citizen on September 26, 2008, when the applicant was 15. The applicant was admitted into the United States as a lawful permanent resident on August 26, 2009, when he was 16 years old. He presently seeks a certificate of citizenship under 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 May 18, 2013, the director determined that the applicant had failed to establish that a court amended the custody order in his case, or that he resided in his U.S. citizen father's legal and physical custody prior to his 18<sup>th</sup> birthday, as required under section 320(a) of the Act. The application was denied accordingly.

On appeal the applicant asserts, through counsel, that the Ministry of Social Protection, [REDACTED] is a government entity in Colombia, with authority to modify child custody orders when parents are in mutual agreement. Counsel asserts that on December 16, 2010, the [REDACTED] amended the custody order in the applicant's case, and awarded custody over the applicant to his father. The applicant therefore met the custody requirements set forth in section 320(a)(3) of the Act. In support of the assertions, counsel submits letters from the [REDACTED] excerpts from Colombian legal provisions, and a letter from the applicant's family attorney in Colombia.

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.

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.”

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). Whether a parent has “legal custody of the child” is based on a judicial determination or a judicial or statutory grant of custody. *See Matter of M*, 3 I&N Dec. 850, 856 (BIA 1950).

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 record reflects that the applicant’s parents obtained a divorce in Colombia on March 24, 1999, when the applicant was six years old, and that physical custody over the applicant was awarded to his mother. The record additionally contains an order issued by the [REDACTED] on December 16, 2010, awarding “custody and personal care” over the applicant to his father, in accordance with an agreement by both parents.

A certification letter from the [REDACTED] dated June 4, 2013, reflects that the [REDACTED] has authority, under Colombian law, to modify court issued custody orders over minor children if there is no dispute between the parties with regard to the modification (referring to Article 82, Section 9 of Act 1098 of 2006, Article 47 of Act 23 of 1991, and Article 31 of Law 640 of 2001). A second letter from the [REDACTED] dated June 5, 2013, certifies that modified custody orders issued by the [REDACTED] in cases such as the applicant’s case, are legally valid in Colombia. A copy of Article 47 of the Colombian family law reflects that the [REDACTED] family advocate has jurisdiction over custody and personal care of minor issues. The record also contains a letter from the applicant’s family attorney in Colombia, explaining that Colombian family law Article 47 of Law 23 of 1991, allows the parties to attempt conciliation under family advocate jurisdiction, before or during the judicial process.

We find, upon review of the evidence, that the applicant has established that the [REDACTED] is a government entity in Colombia, authorized to modify or amend child custody orders in undisputed cases. The December 16, 2010, [REDACTED] order awarding custody over the applicant to his father therefore constitutes a judicial grant of custody for section 320 of the Act purposes. Accordingly, the applicant has established, by a preponderance of the evidence, that he was in his U.S. citizen father’s legal custody as of December 16, 2010, when he was 17 years old.

Immigrant visa documentation, U.S. federal income tax returns, and bank account evidence contained in the record, reflect further that the applicant has resided with his U.S. citizen father since

his admission into the United States as a lawful permanent resident on August 26, 2009, when he was 16 years old. The applicant has therefore also established, by a preponderance of the evidence, that he meets the physical custody requirements set forth in section 320(a)(3) of the Act. In addition, the applicant's father's naturalization certificate and lawful permanent resident status information for the applicant establish, by a preponderance of the evidence, that the applicant meets the requirements set forth in sections 320(a)(1) and 320(a)(2) of the Act.

The burden of proof rests on the claimant to establish the claimed citizenship by a preponderance of the evidence. *See* 8 C.F.R. § 341.2(c). Here, the applicant has established that he met all of the conditions for automatic acquisition of U.S. citizenship under section 320 of the Act. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.