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



U.S. Citizenship
and Immigration
Services



DATE: OCT 31 2013

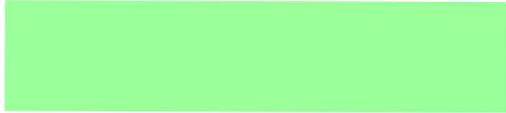
OFFICE: ORLANDO, FL

FILE: [REDACTED]

IN RE: [REDACTED]

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,

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, Orlando, Florida (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 Colombia on March 14, 1996, to married parents. He was admitted into the United States as a lawful permanent resident on December 16, 2006, when he was 10 years old. The applicant's mother became a naturalized U.S. citizen on April 13, 2012, when the applicant was 16 years old. His father is not a U.S. citizen. The applicant 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 naturalized U.S. citizen mother.

In a decision dated December 1, 2012, the director determined that the applicant had failed to submit evidence establishing that he resided in his U.S. citizen mother's legal and physical custody prior to his 18th birthday, as required by section 320 of the Act. The application was denied accordingly.

On appeal the applicant asserts, through counsel, that his mother submitted evidence establishing that he resides in the United States in her legal and physical custody. He speculates that the evidence was either lost in the mail, or misplaced by USCIS. Counsel asserts that he will submit a brief and additional evidence within 30 days of filing the appeal; however, no brief or evidence has been received. Previously submitted documentation contained in the record includes the applicant's birth certificate, his parents' marriage certificate, and evidence of the applicant's lawful permanent residence status and his mother's naturalization.

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, Pub. L. No. 106-395, 114 Stat. 1631 (CCA), applies to this matter because the applicant was not yet 18 years old as of the February 27, 2001 effective date of the CCA. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 156 (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.

The regulation provides, in pertinent part, at 8 C.F.R. § 320.1 that:

Legal custody refers to the responsibility for and authority over a child.

- (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:
 - (i) A biological child who currently resides with both natural parents (who are married to each other, living in marital union, and not separated)[.]

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.”

The burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. 8 C.F.R. § 341.2(c). 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 contains no evidence to demonstrate or establish that the applicant’s parents reside together in the United States in a marital union, or that the applicant has resided in in the United States in his mother’s legal and physical custody since she became a naturalized U.S. citizen on April 13, 2012. The applicant has therefore failed to establish, by a preponderance of the evidence, that he meets the custody requirements contained in section 320(a)(3) of the Act. Because the applicant has not met his burden of proof, the appeal will be dismissed.

ORDER: The appeal is dismissed.