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

[redacted]

Date: OCT 3 1 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:

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,

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 sustained.

The record reflects that the applicant was born in Cuba on December 29, 1999, to married parents. Her parents divorced on July 29, 2000, when the applicant was one years old. On May 22, 2004, the applicant was admitted into the United States as a lawful permanent resident. The applicant's mother became a naturalized U.S. citizen on August 26, 2010, when the applicant was 10 years old. Her father 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 mother.

In a decision dated February 4, 2013, the director determined that the applicant had failed to establish that she resided in her mother's legal and physical custody, as required by section 320(a)(3) of the Act. The application was denied accordingly.

On appeal, the applicant submits a translated copy of her parents' divorce decree, and indicates that the decree establishes that her mother was awarded legal and physical custody over her at the time of her parents' divorce. The record also contains medical, academic, life insurance, and federal income tax return evidence, as well as an affidavit from the applicant's father. In addition, the record contains Spanish-language documentation.

The regulation provides, in pertinent part, at 8 C.F.R. § 103.2(b)(3) that:

> Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

The Spanish-language documentation is not accompanied by a certified English translation. It therefore cannot be considered in the applicant's case. The entire remaining record was reviewed and considered in rendering a decision on the appeal.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ,* 381 F.3d 143, 145 (3d. Cir. 2004). 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 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)).

Under section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33), "[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). 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).

In the present matter, the record contains a copy of the applicant's mother's naturalization certificate reflecting that she became a naturalized U.S. citizen on August 26, 2010, when the applicant was ten years old. The record additionally reflects that the applicant will not turn 18 until December 29, 2017. The applicant has therefore established that she meets the requirements set forth in section 320(a)(1) and (2) of the Act.

In order to establish that she meets section 320(a)(3) of the Act requirements, the applicant submits a divorce decree reflecting that her parents were legally divorced in Cuba on February 23, 1999, when the applicant was one years old. The divorce decree reflects that the applicant's parents were awarded joint legal custody over the applicant at the time of their divorce; the applicant's mother was awarded primary physical custody over the applicant; and the applicant's father was ordered to pay child support, and was awarded visitation with the applicant.

The applicant's father states in an affidavit, signed on January 12, 2013, that applicant lives with her mother, and that the applicant's mother has been her guardian since he and her mother divorced. The record also contains academic records reflecting that the applicant has been enrolled in school in the United States since 2008; that her mother is listed as the applicant's parent in school records; and that school-related correspondence is sent to her mother's address. U.S. federal income tax return

evidence additionally reflects that the applicant's mother claimed the applicant as a full-time dependent in her home in 2011 and 2012. Evidence of the applicant's lawful admission into the United States in May 2004 is also contained in the record.

Upon review, we find that the applicant has established, by a preponderance of the evidence, that she resides in the United States in the legal and physical custody of her mother pursuant to a lawful admission for permanent residence. The applicant therefore meets the requirements set forth in section 320(a)(3) 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 all conditions for automatic acquisition of U.S. citizenship pursuant to section 320 of the Act have been met. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.