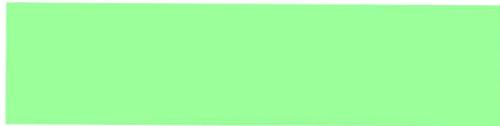




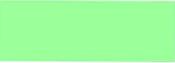
U.S. Citizenship
and Immigration
Services

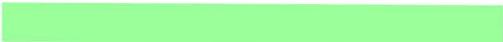
(b)(6)



Date: **SEP 11 2013**

Office: NEW YORK, NY

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. 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 application was denied by the District Director, New York, New York, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on April 27, 1983 in Ecuador. The applicant's parents, [REDACTED] were married in 1969 and divorced in 1985. The applicant's father became a U.S. citizen upon his naturalization on June 22, 1993, when the applicant was ten years old. The applicant's mother is not a U.S. citizen. The applicant was admitted to the United States as lawful permanent resident on January 28, 1995, when he was 11 years old. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship through his U.S. citizen father 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 district director denied the application finding that the applicant was not residing in the legal and physical custody of his U.S. citizen father.

On appeal, the applicant maintains that he was residing with his father as required. The appeal is accompanied by social security statement relating to the applicant, indicating that he was employed, in relevant part, in 2000 and 2001.

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.¹

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 his father naturalized prior to his eighteenth birthday. The applicant's parents

¹ Former section 321 of the Act was repealed by the CCA and is therefore inapplicable to this case.

were divorced in 1985, but the divorce document does not contain a custody order. At issue in this case is whether the applicant can establish that he was residing in the United States in the legal and physical custody of his U.S. citizen father.

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.”

The applicant’s parents’ divorce document does not include a custody award. In derivative citizenship cases where the parents have legally separated but there is no formal, judicial custody order, the parent having “actual, uncontested custody” will be regarded as having “legal custody” of the child. *Bagot v. Ashcroft*, 398 F.3d 252, 266-67 (3d Cir. 2005) (citing *Matter of M-*, 3 I&N Dec. 850, 856 (Cent. Office 1950)). Additionally, the regulation at 8 C.F.R. § 320.1 provides that “[t]here may be other factual circumstances under which [USCIS] will find the U.S. citizen parent to have legal custody for purposes of the CCA.”

In this case, the applicant indicates that he was residing with his father after his admission to the United States and until sometime in 2001. The evidence submitted in this regard includes, in relevant part, the applicant's father's income tax returns for the year 1999 and the applicant's high school transcript. The AAO notes that the applicant's address listed on his high school transcript is not the same as the address listed in his father's income tax return. The AAO further notes that the evidence submitted does not relate to the period of residence in question, between the enactment of the CCA in February 2001 and the applicant's eighteenth birthday in April 2001. The statute does not require that the applicant establish that he resided with his father for any particular amount of time, only that he demonstrate that he was in his father's legal and physical custody prior to his eighteenth birthday. The AAO finds that the record does not establish, by a preponderance of the evidence, that the applicant was residing in his father's legal and physical custody as is required under 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 not been met.

ORDER: The appeal is dismissed.