



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: SEP 25 2013

OFFICE: OAKLAND PARK, 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:
[REDACTED]

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,

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 (the director), Oakland Park, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born in the Dominican Republic on December 5, 1994 to married parents. The applicant's parents divorced in the Dominican Republic on February 10, 2004. The applicant was admitted into the United States as a lawful permanent resident on April 11, 2011, when he was 16 years old. His father became a naturalized U.S. citizen on July 20, 2012, when the applicant was 17 years old. His mother 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 he derived U.S. citizenship through his father.

In a decision dated March 7, 2013, the director determined that the applicant had failed to establish that he resided in the United States in the legal custody of his U.S. citizen father prior to his 18th birthday, as required under section 320(a)(3) of the Act. The application was denied accordingly.

On appeal, the applicant asserts, through counsel, that legal custody can be established by evidence other than a court decree, and that the documentation in the record establishes, by a preponderance of the evidence, that the applicant resided in the legal custody of his father prior to turning 18. Counsel also submits a court amendment granting legal and physical custody over the applicant to his father in March 2013.

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.

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)).

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 divorce decree from a court in the Dominican Republic, reflecting that the applicant’s parents married on December 23, 1993, and obtained a divorce on February 10, 2004. The divorce decree, and a sworn statement signed by the applicant’s parents on September 26, 2012, reflect that, at the time of the applicant’s parent’s divorce, parental custody and care over the applicant was awarded to the applicant’s mother.

The applicant’s parents state in the September 26, 2012 sworn statement that, when the applicant moved to Puerto Rico, his mother gave “physical custody and care” over the applicant to his father. The applicant’s mother declares further, in the sworn statement, that she gives physical custody of the applicant to his father voluntarily, and that she authorizes the applicant’s father to give “sustention, medical services and education” and other necessary care to the applicant.

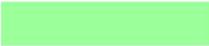
The record also contains a court order from the [REDACTED] in Puerto Rico, granting custody over the applicant, and rights of legal guardianship without the consent of his mother, to the applicant’s father, effective March 20, 2013.

Upon review, the AAO finds that the applicant has failed to establish by a preponderance of the evidence that he resided in the legal custody of his U.S. citizen father prior to his 18th birthday. The record reflects that at the time of the applicant’s parents’ divorce on February 10, 2004, a court awarded custody and care over the applicant to his mother. Although the applicant’s parents subsequently attempted to change the custody and care arrangement on their own, their September 26, 2012 sworn statement is a private document, and does not constitute a court order or legal amendment to the February 2004 order awarding care and custody over the applicant to his mother. Moreover, the AAO notes that the March 20, 2013 court order awarding custody and legal guardianship of the applicant to his father occurred after the applicant turned 18. It is additionally noted that state court orders pertaining to retroactive or *nunc pro tunc* custody agreements are generally not recognized for purposes of obtaining immigration benefits. See *Hendrix v. INS*, 583 F.2d 1102 (9th Cir. 1978). See also, *Fierro v. Reno*, 217 F.3d 1 (1st Cir. 2000).

The regulation at 8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. In the present matter, the applicant has failed to meet his burden of proof. The appeal will therefore be dismissed.¹

¹ The present decision is without prejudice to the applicant’s filing a Form N-400, Application for Naturalization pursuant to section 316 of the Act, 8 U.S.C. § 1427, if eligible.

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NON-PRECEDENT DECISION

ORDER: The appeal is dismissed.