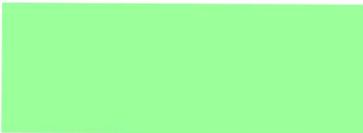
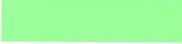


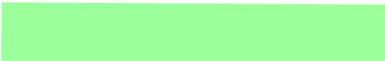


**U.S. Citizenship
and Immigration
Services**

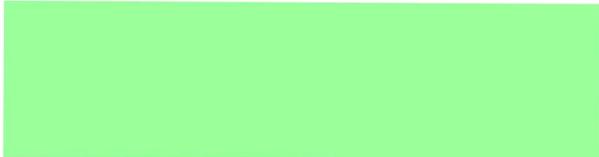
(b)(6)



DATE: DEC 18 2014 OFFICE: CHICAGO, IL FILE: 

IN RE: Applicant: 

APPLICATION: Application for Certificate of Citizenship under Section 320 of the
Immigration and Nationality Act, 8 U.S.C. § 1431

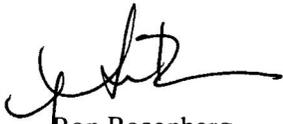
ON BEHALF OF APPLICANT:


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 Director of the Chicago, Illinois Field Office (the director) denied the Application for Certificate of Citizenship (Form N-600), and the Administrative Appeals Office (AAO) dismissed the matter on appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion is granted. The AAO's prior decision, dated April 16, 2014, and the director's decision, dated July 24, 2013, are withdrawn. The appeal is sustained. The matter is returned to the director for issuance of a certificate of citizenship to the applicant.

Pertinent Facts and Procedural History

The applicant was born to unmarried parents in [REDACTED] on November [REDACTED]. She was admitted into the United States as a lawful permanent resident on April [REDACTED] when she was 17 years old. The applicant's father became a naturalized U.S. citizen on September 28, 2012, when the applicant was 16 years old. Her mother 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 she derived U.S. citizenship through her father.

In a decision dated July 24, 2013, the director determined that the applicant failed to establish that she resided in the United States in her father's legal custody prior to her 18th birthday, as required by section 320 of the Act. We affirmed the director's decision and dismissed the applicant's appeal on April 16, 2014. Through counsel, the applicant asserts on motion that United States Citizenship and Immigration Services (USCIS) erred in failing to apply the presumption of legal custody under 8 C.F.R. § 320.1 in her case, and in failing to find that she derived U.S. citizenship under section 320 of the Act.

We review these proceedings *de novo*.

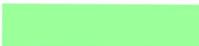
Applicable Law

Because the applicant was born abroad, she is presumed to be an alien and bears the burden of establishing his claim to U.S. citizenship by a preponderance of credible evidence. *See Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008). The applicable law for derivative citizenship purposes is that 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); *accord Jordon v. Attorney General*, 424 F.3d 320, 328 (3d Cir. 2005). Section 320 of the Act is applicable in this case.

Section 320 of the Act provides:

(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 Board of Immigration Appeals (Board) held in *Matter of Harris*, 15 I&N Dec. 39, 41 (BIA 1970) that legal custody vests “[b]y virtue of either a natural right or a court decree.” The Board held in *Matter of Rivers*, 17 I&N Dec. 419 (BIA 1980) that a natural father is presumed to have legal custody of his child at the time of legitimation in the absence of affirmative evidence indicating otherwise. In addition, the regulation provides, in pertinent part, at 8 C.F.R. § 320.1(1) that:

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:

* * *

(iii) [a] biological child born out of wedlock who has been legitimated and currently resides with the natural parent.

Analysis

We found in our decision, dated April 16, 2014, that the presumption that the applicant’s father had legal custody over the applicant was rebutted by extrajudicial agreement evidence reflecting that in 2004, the applicant’s parents jointly agreed that the applicant’s mother would be given custody over the applicant. The agreement reflected further, in pertinent part, that any change in custody arrangements for the applicant must be agreed to personally by both parents, admitting the arbitration of an arbitrator; non-compliance of any obligation in the document would result in suspension of the agreement’s validity until renegotiation by the parties; and that any disagreements between the parties would be resolved in court.

On motion the applicant indicates that under Peruvian law, the extrajudicial agreement contained in the record does not constitute a determination that may only be changed through an arbitrator or in court. The applicant submits legal information reflecting that under articles 74 and 75 of the Peruvian Code of Children and Adolescents Act, Law No. 27337, both parents have paternal authority, or legal custody, over a child, and this right may only be taken away by judicial action. The applicant also submits information reflecting that under articles 81 and 84 of the Peruvian Code of Children and Adolescents Act, Law No. 27337, as modified by articles 1 and 2 of the Code of the Child and the Adolescent, Law No. 29269, when a child’s parents have separated, custody of the child is determined by common agreement between the parents.¹

¹ The Library of Congress states , in pertinent part, with regard to Law No. 29269 that:

The new version of article 81 states that when the parents are ‘de facto’ (actually) separated, the custody of the children or adolescents is determined by common agreement between the parents. . . . If there is no agreement or if the agreement is harmful to the children, custody will be decided by a special judge, who will issue the necessary measures for implementation of his decision[.]

Upon *de novo* review, the applicant has established, by a preponderance of the evidence, that the applicant's parents did not require a judicial order, or written or arbitrated agreement to change the custody arrangement contained in their 2004 extrajudicial agreement. Certificate of Authorization and actual residence evidence contained in the record reflects further that the applicant's parents had a common agreement in 2013 that the applicant's father would have custody of the applicant. The applicant therefore established the presumption of legal custody conditions contained in 8 C.F.R. § 320.1(1). She also meets the legal custody condition contained in section 320(a)(3) of the Act. The record reflects further that the applicant was under the age of 18 when she was admitted into the United States as a lawful permanent resident, and that she resided in the United States in her U.S. citizen father's physical custody as a lawful permanent resident prior to turning 18.

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. The appeal will therefore be sustained.

Conclusion

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 been met.

ORDER: The motion is granted. The AAO decision, dated April 16, 2014, and the director's decision, dated July 24, 2013, are withdrawn. The appeal is sustained. The matter is returned to the director for issuance of a certificate of citizenship to the applicant.