



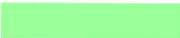
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **JUL 08 2014**

Office: MANCHESTER, NH

FILE: 

IN RE: Applicant: 

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

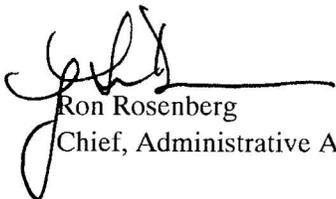
ON BEHALF OF APPLICANT:

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.

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Manchester, New Hampshire (the director) denied the Application for Certificate of Citizenship (Form N-600) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded for action consistent with this decision.

Pertinent Facts and Procedural History

The record reflects that the applicant was born on September 14, 1983 in the Dominican Republic. The applicant's father, [REDACTED] became a U.S. citizen upon his naturalization on February 21, 1996, when the applicant was 12 years old. The applicant's mother is not a U.S. citizen. The applicant's parents were married in 1980, and divorced in 1990. The applicant was admitted to the United States as lawful permanent resident on July 15, 1992, when she was eight years old. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship through her 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 director denied the application finding that the applicant's father was not granted legal custody of the applicant following the applicant's parents' divorce. *See* Decision of the Field Office Director, dated October 31, 2013.

On appeal, the applicant maintains that her father gained physical and legal custody upon her admission to the United States. *See* Appeal Statement. In support of the appeal, the applicant submits her father's income tax returns for the years 1996 through 1998 listing her as a dependent. The appeal is also accompanied by a sworn statement executed by the applicant's father indicating that he had custody of the applicant in 1996.

Applicable Law

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 her case and 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.

Analysis

The record indicates that the applicant was admitted to the United States as a lawful permanent resident and that her father naturalized prior to the applicant's eighteenth birthday. The applicant's parents were divorced in 1990, and the divorce judgment includes a grant of "guardianship and care" of the applicant to her mother.

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." 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 record indicates that the applicant has been in her father's physical custody. The applicant's father's affidavit and income tax returns demonstrate that the applicant has been residing with her father. Nevertheless, the applicant's parents' divorce judgment unequivocally grants legal custody of the applicant solely to her mother. There is no indication that the divorce judgment has been amended or that a new custody arrangement has been officially sanctioned.

Nevertheless, the record contains a copy of the applicant's valid U.S. passport. In *Matter of Villanueva*, 19 I&N Dec. 101 (BIA 1984), the Board of Immigration Appeals (Board) held that a valid U.S. passport is conclusive proof of U.S. citizenship. Where, as here, there is a U.S. passport in the record but insufficient evidence of eligibility for issuance of a certificate of citizenship, the matter must be remanded to the director to request that the U.S. Department of State, Passport Office, review and determine whether revocation of the U.S. passport is warranted. Once the Passport Office's review is complete, the director shall issue a new decision into the record.

ORDER: The director's decision is withdrawn. The matter is remanded to the director for entry of a new decision, which if adverse to the applicant, shall be certified to the AAO for review.