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: JUL 24 2014 Office: NEW YORK, NY FILE: [redacted]

IN RE: Applicant: [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. 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 Director of the New York, New York District Office denied the Application for Certificate of Citizenship (Form N-600) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

Pertinent Facts and Procedural History

The applicant was born in the Dominican Republic on August 29, 1994. The applicant's father, , became a U.S. citizen upon his naturalization on June 17, 2011, when the applicant was 16 years old. The applicant's mother is not a U.S. citizen. The applicant's parents were divorced in 1995. The applicant was admitted to the United States as lawful permanent resident on February 22, 2012, when he was 17 years old. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship through his 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 Director, dated June 18, 2013.

On appeal, the applicant maintains that his father gained custody on the basis of a legal document executed by his mother in 2011, prior to his admission to the United States.

Applicable Law

We review 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 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 his father naturalized prior to the applicant's eighteenth birthday. The applicant's parents were divorced in 1995, and the divorce judgment includes an order granting guardianship of the applicant to his 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."

The applicant's parents' divorce judgment unequivocally grants legal custody of the applicant solely to his mother. There is no indication that the divorce judgment has been amended or that a new custody arrangement has been officially sanctioned. The applicant's mother's notarized statement ceding custody of the applicant upon his admission to the United States is not an officially sanctioned amendment of the guardianship order in the applicant's parents' divorce decree. Lastly, the applicant's residence with his father since his admission may establish his physical custody, but not that "an award of primary care, control, and maintenance" has been granted to his father such that he can satisfy the legal custody requirement.

Thus, the applicant cannot establish that he acquired U.S. citizenship automatically through his father under section 320 of the Act.

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 not been met.

ORDER: The appeal is dismissed.