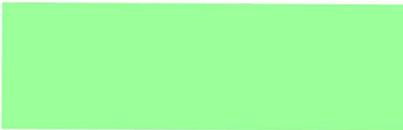




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: JUL 29 2014

Office: HIALEAH, FL

FILE: 

IN RE:

Applicant: 

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

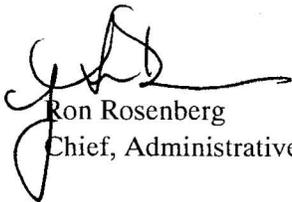
ON BEHALF OF APPLICANT:

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, Hialeah, Florida (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 appeal will be sustained and the matter returned to the director for issuance of the applicant's certificate of citizenship.

Pertinent Facts and Procedural History

The applicant was born on October 29, 1999 in Cuba. The applicant's father, [REDACTED], became a U.S. citizen upon his naturalization on December 9, 2011, when the applicant was 12 years old. The applicant's mother is not a U.S. citizen. The applicant's parents were married in 1988, and divorced in 2001. The applicant was admitted to the United States as lawful permanent resident on June 29, 2012, when he was 13 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 had failed to submit a copy of his parents' marriage certificate. *See* Decision of the Field Office Director, dated January 15, 2014.

On appeal, the applicant, through his father, maintains that he is eligible for citizenship under section 320 of the Act. *See* Statement of the Applicant on Form I-290B, Notice of Appeal or Motion. The appeal is accompanied by a copy of the applicant's parents' marriage certificate.

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

At the outset, we note that 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.

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 2001, but the divorce decree does not contain a custody order. The applicant's mother signed a power of attorney, ceding guardianship of the applicant to his father in 2012. At issue in this case is whether the applicant can establish that he was residing in his father's legal and physical custody.

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 [U.S. Citizenship and Immigration Services] will find the U.S. citizen parent to have legal custody for purposes of the CCA."

The evidence in the record establishes that the applicant has been residing with his father since his admission to the United States in 2012 and, therefore, the applicant's father had physical custody over the applicant prior to the applicant's eighteenth birthday. See e.g. school and medical records.

Where, as here, a child's parents are divorced 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)). The regulations further provide that "other factual circumstances" may warrant a finding of legal custody. The evidence in the record indicates that the applicant has been in his father's "actual, uncontested custody" since his admission to the United States. See e.g. the applicant's mother's power of attorney, and school and medical records listing the applicant's father as his guardian.

The applicant has established, by a preponderance of the evidence, that he was residing in his U.S. citizen father's legal and physical custody pursuant to a lawful admission as a permanent resident while under the age of eighteen as is required under section 320(a) 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 been met.

ORDER: The appeal is sustained. The matter is returned to the Hialeah, Florida Field Office for issuance of a certificate of citizenship to the applicant.