



U.S. Citizenship
and Immigration
Services

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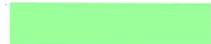


Date:

JUL 31 2014

Office: WASHINGTON, DC

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IN RE:

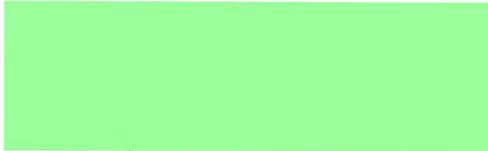
Applicant:



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. 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 Field Office Director, Washington, D.C. (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 dismissed.

Pertinent Facts and Procedural History

The applicant was born on January 12, 1997 in Jamaica. The applicant's mother, [REDACTED] became a U.S. citizen upon her naturalization on March 11, 2011, when the applicant was 14 years old. The applicant's father's name is not listed in his birth certificate and there is no indication that he is a U.S. citizen. The applicant was admitted to the United States as lawful permanent resident on July 14, 2010, on the basis of an approved petition for special immigrant juvenile status. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship through his mother 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 was not in his mother's legal and physical custody as required by section 320(a)(3) of the Act. *See* Decision of the Field Office Director, dated June 11, 2013.

On appeal, the applicant, through counsel, maintains that he should be deemed to be in his mother's custody for purposes of section 320 of the Act. *See* Appeal Brief at 5 (citing 8 C.F.R. § 320.1).

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 removed from his mother's custody in 2006, becoming a ward of the [REDACTED] Department of Social Services. He became a lawful permanent resident in 2010 on the basis of an approved special immigrant juvenile petition. His mother became a U.S. citizen upon her naturalization in 2011. At issue in this case is whether the applicant can establish that he is residing in his mother's legal and physical custody pursuant to a lawful admission for permanent residence.

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"). Legal custody can be presumed in a number of circumstances, but none are applicable to this case. *Id.* Further, 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 (USCIS)] 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 not been residing in his mother's legal or physical custody since 2006. He obtained special immigrant juvenile status after being removed from his mother's custody and becoming a ward of the [REDACTED] Department of Social Services. See Order Regarding Minor's Eligibility for Special Immigrant Juvenile Status, dated August 18, 2009.

The applicant, through counsel, suggests that the legal and physical custody requirement should be interpreted to allow for a finding of custody where, as here, there is evidence that a minor was removed from a parent's custody because of neglect or abuse. Counsel maintains that the applicant's circumstances fit within those anticipated by the regulation at 8 C.F.R. § 320.1. The "other factual circumstances" referred to in the regulations, however, do not permit USCIS to ignore the parental custody requirement all together. Similarly, USCIS may not grant citizenship on equitable or discretionary grounds.

The requirements for U.S. citizenship, as set forth in the Act, are statutorily mandated by Congress, and a certificate of citizenship can only be issued when an applicant meets the relevant statutory provisions. See *INS v. Pangilinan*, 486 U.S. 875, 885 (1988) (a person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress). Even courts may not use their equitable powers to grant U.S. citizenship, and any doubts concerning citizenship are to be resolved in favor of the United States. *Id.* at 883-84; see also *United States v. Manzi*, 276 U.S. 463, 467 (1928) (stating that "citizenship is a high privilege, and when doubts exist concerning a grant of it ... they should be resolved in favor of the United States and against the claimant").

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.