

(b)(6)



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

Date: **MAR 06 2014**

Office: ORLANDO, FL

IN RE:

Applicant:

APPLICATION:

Application for Certificate of Citizenship Pursuant to 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Orlando, 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 a certificate of citizenship to the applicant.

Pertinent Facts and Procedural History

The applicant was born on January 10, 1995 in the Philippines. The applicant's parents, Amalia and Danilo Catangay, were married in 1994 and divorced in 2007 in the State of Florida. The applicant's mother became a U.S. citizen upon her naturalization in 2009. The applicant was admitted to the United States as lawful permanent resident on May 31, 2012. The applicant's eighteenth birthday was on January 10, 2013. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The director denied the application, finding that the applicant was not residing in his mother's physical custody prior to his eighteenth birthday such that he could acquire U.S. citizenship from her.

On appeal, the applicant maintains that he was in his parents' joint custody. See Statement of the Applicant on Form I-290B, Notice of Appeal or Motion. In support of his appeal, the applicant submits a document entitled "Affidavit of Consent" executed by his father in 2012, his mother's Petition for Dissolution of Marriage, and a Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) Affidavit (UCCJEA Affidavit).

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). Section 320 of the Immigration and Nationality Act (the Act), as amended, is applicable to this case.

Section 320 of the Act 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 applicant was admitted to the United States as a lawful permanent resident on May 31, 2012. His mother became a U.S. citizen upon her naturalization in 2009. The applicant's parents were divorced in 2007. At the time of the applicant's parents' divorce, the applicant's mother was residing in the United States, and the applicant and his father were residing in the Philippines. The divorce was obtained by default, and did not include a custody award. See Judgment of Dissolution of Marriage. The applicant's mother stated at the time of the divorce that parental responsibility over the applicant was shared by both parents, that the applicant was residing with his maternal grandmother in the Philippines, and that she was financially supporting the applicant. See UCCJEA Affidavit.

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." The applicant's parents' divorce decree does not contain a custody award.

The regulation at 8 C.F.R. § 320.1 further 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."

Moreover, in derivative citizenship cases where the parents have 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 record demonstrates that the applicant was in his mother's "actual, uncontested custody" prior to his eighteenth birthday.

The applicant immigrated to the United States on the basis of an approved alien relative petition (Form I-130) filed by his mother. Both on the Form I-130 and in his Application for Immigrant Visa and Alien Registration (Form DS-230), the applicant lists his address as being with his maternal grandmother, not his father. Additionally his intended address in the United States on both the Form I-130 and DS-230 is with his mother. The applicant's father stated in his "Affidavit of Consent" that the applicant is "under the care and custody of [his] mother," and that he gave his full consent and had no objection to the applicant's travel to the United States to reunite with his mother in Florida. Accordingly, the applicant has established that he was residing with and in the legal custody of his mother such that he could derive citizenship from her 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 been met.

ORDER: The appeal is sustained. The matter is returned to the director for issuance of a certificate of citizenship to the applicant.