



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

(b)(6)



Date: **MAY 20 2014**

Office: CHICAGO, IL

FILE: 

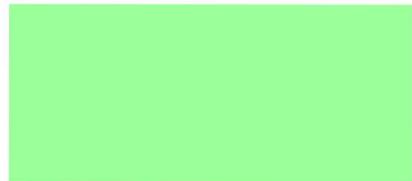
IN RE:

Applicant: 

APPLICATION:

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

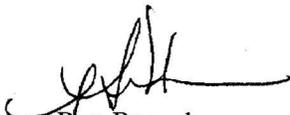
ON BEHALF OF APPLICANT:



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,



Ben Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Chicago, Illinois (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 record reflects that the applicant was born on July 23, 1995 in Poland. The applicant's father, [REDACTED] became a U.S. citizen upon his naturalization on June 18, 2012, when the applicant was 16 years old. The applicant's mother is not a U.S. citizen. The applicant's parents were married in 1988, and divorced in 2005. The applicant was admitted to the United States as a lawful permanent resident on June 4, 2013, 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 physical custody of the applicant through the applicant's parents' divorce. *See* Decision of the Field Office Director, dated October 24, 2013. The director concluded that a letter from the applicant's mother acceding to the applicant's immigration to the United States was not sufficient to establish that the applicant was residing in his father's physical custody as required by section 320(3) of the Act. *Id.*

On appeal, the applicant, through counsel, maintains that the director erred in finding that he was not in his father's physical custody. *See* Letter Brief in Support of Appeal. Counsel notes that the applicant's parents were awarded joint custody of the applicant upon their divorce, such that the father's legal custody requirement was established. *Id.* Further, counsel states that the applicant moved to the United States and thereafter resided in his father's physical custody as evidenced by previously submitted documentation. *Id.*

#### *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 (9<sup>th</sup> 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 2005, and the divorce judgment includes a grant of joint custody of the applicant to both parties. In denying the application, the director noted that, although the divorce judgment awarded custody of the applicant to both of his parents, the court stated: "[t]he child's residence being that of the mother." The director concluded from this language that the court did not grant the required physical custody to the applicant's U.S. citizen father.

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 "the parent who has been awarded 'joint custody'" will be considered to have legal custody of the child and 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 director found that legal custody had been established in this case, but not physical custody. Thus, at issue on appeal is whether the applicant can establish that he was residing in the United States in the physical custody of his U.S. citizen father.

In this case, the record indicates that the applicant has been residing with his father since his admission to the United States in 2013 and, therefore, the applicant's father had physical custody over the applicant prior to the applicant's eighteenth birthday. The evidence submitted includes, in relevant part:

- 1) The applicant's mother's letter acceding to the applicant's immigration to the United States, dated February 9, 2013;
- 2) The applicant's social security card, issued on June 27, 2013, and addressed to him at his father's address, [REDACTED];
- 3) The applicant's Illinois Driver's License, issued on July 17, 2013, listing the applicant's father's address, [REDACTED];
- 4) The verification from the applicant's father's landlord, indicating that the applicant moved in to live with his father and stepmother on June 4, 2013;
- 5) The acceptance letter from [REDACTED] High School; and

- 6) The applicant's bank statement, listing his father's name as joint owner and his address.

The record also includes the applicant's immigration documents, listing his father's address. The statute does not require that the applicant establish that he resided with his father for any particular amount of time, only that he demonstrate that he was in his father's legal and physical custody prior to his eighteenth birthday. Here, the record establishes, by a preponderance of the evidence, that the applicant was residing in his father's legal and physical custody pursuant to his lawful admission as a permanent resident while under the age of eighteen as is required under section 320(a)(3) 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 Chicago Field Office for issuance of a certificate of citizenship to the applicant.