



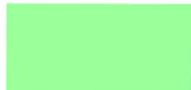
U.S. Citizenship
and Immigration
Services

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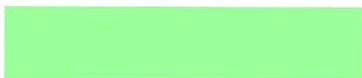


Date: **MAY 20 2014**

Office: MIAMI, FL

FILE: 

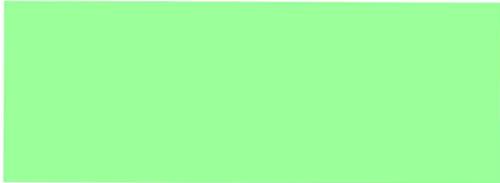
IN RE:

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:



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, Miami, Florida (the director), denied the Form N-600, Application for Certificate of Citizenship. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

Pertinent Facts and Procedural History

The record reflects that the applicant was born on April 6, 1995 in Cuba. The applicant's parents, [REDACTED] and [REDACTED] were married in 1983 and divorced in 2007. The applicant's father became a U.S. citizen upon his naturalization on July 24, 2009, when the applicant was 14 years old. The applicant's mother is not a U.S. citizen. The applicant was admitted to the United States as lawful permanent resident as of October 6, 1997, when she was 2 years old. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship upon her father's naturalization 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 residing in the primary custody of her U.S. citizen father following her parents' divorce. See Decision of the Field Office Director, dated September 17, 2013.

On appeal, the applicant, through counsel, maintains that her parents were awarded shared parental responsibility upon their divorce and that, therefore, she was in her U.S. citizen father's legal custody such that she acquired U.S. citizenship upon his naturalization. See Appeal Brief.

Applicable Law

The AAO conducts appellate review on a de novo basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Because the applicant was born abroad, he is presumed to be an alien and bears the burden of establishing his claim to U.S. citizenship by a preponderance of credible evidence. See *Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008). The "preponderance of the evidence" standard requires that the record demonstrate that the applicant's claim is "probably true," based on the specific facts of each case. See *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r. 1989)).

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 her 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 record indicates that the applicant was admitted to the United States as a lawful permanent resident in 1997 and that her father naturalized in 2009, prior to her eighteenth birthday. The applicant's parents were divorced in 2007. Pursuant to a marital settlement agreement, the applicant's parents shared parental responsibility over the applicant with the mother having primary residential responsibility and the father "secondary parental responsibility, with reasonable rights of visitation."

At issue in this case is whether the applicant can establish that she was residing in the United States in the legal and physical custody of her 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 a parent who was awarded "joint custody" will be considered to have legal custody of the child. Finally, the regulation states 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." See 8 C.F.R. §320.1.

In this case, the record indicates that the applicant's parents were awarded shared parental responsibility over the applicant upon their divorce. The award of "shared parental responsibility" is akin to a "joint custody" award. The regulation provides that a parent who has "joint custody" is deemed to have legal custody of the child for purposes of the CCA. The AAO finds that the applicant can establish that she was in her father's legal custody.

Section 320 of the Act also requires that the applicant establish that she was residing in her father's physical custody. As noted above, the applicant's parents' marital settlement provided that the applicant's mother had "primary residential responsibility" over the applicant, and further stated that the applicant's mother may claim her as a dependent for tax purposes. The preponderance of the evidence in the record does not demonstrate that the applicant was residing in her father's physical custody as is required under section 320 of the Act. Thus, the applicant did not acquire U.S. citizenship upon her father's naturalization.



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.