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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Service  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



**MAY 27 2014**

Date:

Office: HELENA, MT

File:

IN RE:

APPLICATION:

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

ON BEHALF OF APPLICANT:

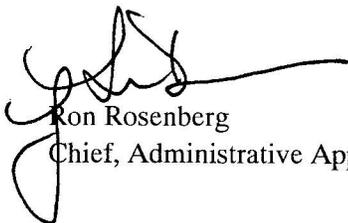
SELF-REPRESENTED

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. 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 Director of the Helena, Montana Field Office (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 in Nigeria on February 11, 1998, to married parents. His parents divorced on April 10, 2000, when the applicant was two years old. The applicant's mother is not a U.S. citizen. His father became a naturalized U.S. citizen on November 21, 2007, when the applicant was nine years old. The applicant was admitted into the United States as a lawful permanent resident on September 4, 2010, when he was twelve years old. He seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, based on the claim that he derived U.S. citizenship through his father.

In a decision dated June 10, 2013, the director determined that the applicant had failed to establish that his father was awarded legal custody over him, or that he resided in the legal and physical custody of his U.S. citizen father, as required by section 320(a)(3) of the Act. The application was denied accordingly.

On appeal, the applicant submits a letter from his mother, authorizing the applicant to live with his father in the United States, and authorizing the applicant's father to take custody of the applicant.

*Applicable Law*

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d. Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

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). Section 320 of the Act, as amended by the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), applies to the applicant's U.S. citizenship claim. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

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.

Under section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33), “[t]he term ‘residence’ means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent.”

Legal custody vests “[b]y virtue of either a natural right or a court decree.” *Matter of Harris*, 15 I&N Dec. 39, 41 (BIA 1970). In the absence of a judicial determination or grant of custody in a case of a legal separation of the naturalized parent, the parent having actual, uncontested custody of the child is to be regarded as having “legal custody”. See *Matter of M*, 3 I&N Dec. 850, 856 (BIA 1950).

The burden of proof is on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. 8 C.F.R. § 341.2(c).

#### *Analysis*

In the present matter the record contains a Nigerian final divorce judgment, dated April 10, 2000, dissolving the marriage between the applicant’s mother and father, and granting custody over the applicant to his mother. The applicant’s mother has therefore clearly been awarded legal custody over the applicant. See *Matter of Harris*, *supra*. Although the applicant’s mother subsequently states in a letter, dated April 15, 2010, that she authorizes the applicant to live with his father in the United States, and that she gives custody of the applicant to his father, the letter from the applicant’s mother is a private document. It does not constitute a court order or amendment to the custody provisions contained in the applicant’s parents’ April 2000 divorce judgment. The applicant has therefore failed to satisfy section 320(a)(3) of the Act, which requires him to reside in the legal custody of his U.S. citizen father. In addition, the record lacks evidence to demonstrate that the applicant resides with his U.S. citizen father in the United States. The applicant therefore also failed to establish that he meets the physical custody requirement set forth in 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 not been met. The appeal will therefore be dismissed.<sup>1</sup>

**ORDER:** The appeal is dismissed. The application remains denied.

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<sup>1</sup> The present decision is without prejudice to the applicant’s filing a Form N-400, Application for Naturalization, pursuant to section 316 of the Act, 8 U.S.C. § 1427, if eligible, once he turns 18.