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

(b)(6)

U.S. Citizenship and Immigration Services

Date: MAY 27 2014 Office: TAMPA, 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:

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 Field Office Director, Tampa, 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 2, 1987 in Haiti. The applicant's father, became a U.S. citizen upon his naturalization on November 18, 2003, when the applicant was 16 years old. The applicant's mother, as indicated in his birth certificate, is The applicant's mother is not a U.S. citizen. The applicant was admitted to the United States as lawful permanent resident on January 16, 2003, when he was 15 years old, based upon a petition for alien relative filed on his behalf by his step-mother. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship upon his 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 failed to establish that he was residing in the legal and physical custody of his U.S. citizen father. On appeal, the applicant submits a school record listing his father as his guardian.

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 applicant's eighteenth birthday was on April 2, 2005. At issue in this case is whether he can establish that he was residing in the United States in the legal and physical custody of his 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] biological child born out of wedlock who has been legitimated and currently resides with the natural parent." 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 never married. In order to establish legal custody, the applicant must demonstrate that he was legitimated and that he was residing with his father after his admission to the United States and before his eighteenth birthday.

On January 27, 1959, Haiti abolished all legal distinction between Haitian children born in and out of wedlock. In *Matter of Richard*, 18 I.&N. Dec. 208 (BIA 1982), the Board of Immigration Appeals held that, as of January 27, 1959, all persons born out of wedlock in Haiti and acknowledged by their natural father are deemed to be legitimate children.

The applicant's birth registration from the National Archives of Haiti establishes that the applicant's father registered his birth and, in so doing, acknowledged the applicant as his son. Thus, the applicant can establish that he was legitimated by his natural father.

Regarding residency with his father, there is no evidence in the record to demonstrate that the applicant was or is currently residing with his father. The school record submitted by the applicant on appeal lists his father under "Parent Name," but does not indicate the applicant's father's address or his guardianship status. The school record is thus not probative evidence of the applicant's residence or custody, and the applicant has presented no other evidence for us to consider.

In sum, the record does not establish, by a preponderance of the evidence, that legal custody can be presumed, and the applicant cannot establish that he was residing in the legal and physical custody of a U.S. citizen parent such that he could derive U.S. citizenship upon his 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.