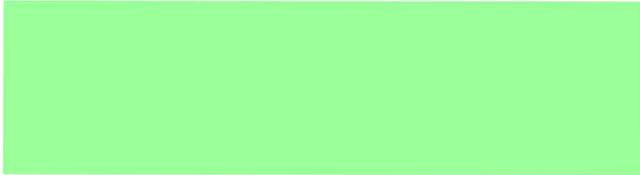




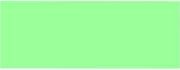
U.S. Citizenship  
and Immigration  
Services

(b)(6)

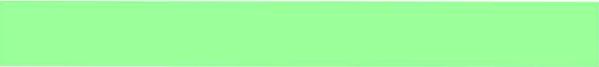


Date: **MAY 30 2014**

Office: ORLANDO, 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.

Thank you,

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

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director of the Orlando, Florida 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 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 in Ecuador on December 24, 1992, to married parents. Her father became a naturalized U.S. citizen on August 10, 1996, when she was three years old, and the applicant was admitted into the United States as a lawful permanent resident on December 27, 1997, when she was five years old. The applicant's parents divorced on November 3, 2000, when she was seven years old, and the applicant's mother was awarded custody of the applicant. Her mother became a naturalized U.S. citizen on May 7, 2004, when the applicant was 11 years old. The applicant presently 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 she derived U.S. citizenship through her mother.<sup>1</sup>

In a decision dated January 8, 2013, the director determined that the applicant had failed to establish that, prior to her 18<sup>th</sup> birthday, she resided in a U.S. citizen parent's legal and physical custody, as required by section 320(a)(3) of the Act. The application was denied accordingly. On appeal, the applicant asserts that she has lived with her mother all of her life; and she submits her parent's divorce decree, academic evidence, and federal and state income tax return evidence.<sup>2</sup>

*Applicable Law*

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3rd 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), took effect on February 27, 2001, and provides for automatic derivation of U.S. citizenship upon the fulfillment of certain

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<sup>1</sup> The record contains a previous Form N-600, filed by the applicant in April 2003. The application was denied for lack of prosecution after the applicant's father failed to submit requested evidence of his legal custody over the applicant.

<sup>2</sup> On February 27, 2014, we issued a Request for Evidence (RFE) to the applicant for documentation that she resided in her mother's physical custody between May 2004 and December 2010. The applicant responded to the RFE with the requested documentation, which has been incorporated into the appellate record.

conditions prior to a child's 18th birthday. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). The provisions contained in section 320 of the Act apply to the applicant's U.S. citizenship claim.

Section 320 of the Act provides 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 shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. 8 C.F.R. § 341.2(c). 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)).

#### *Analysis*

The record contains a copy of the applicant's father's naturalization certificate, reflecting that he became a naturalized U.S. citizen on August 10, 1996, when the applicant was three years old. The record also contains a copy of the applicant's mother's naturalization certificate, reflecting that she became a naturalized U.S. citizen on May 7, 2004, when the applicant was 11 years old. In addition, the record reflects that the applicant was admitted into the United States as a lawful permanent resident on December 27, 1997, when she was five years old. The U.S. citizen parent

and lawful permanent resident requirements contained in section 320 of the Act have therefore been met. A copy of the applicant's parents' divorce judgment is also contained in the record and reflects that the applicant's parents obtained a divorce on November 3, 2000, when the applicant was seven years old, and that her mother was awarded legal custody over the applicant. The issue in this case, is therefore whether the applicant has established that she resided in the United States in the physical custody of her mother, after her mother's naturalization as a U.S. citizen, on May 7, 2004, and prior to the applicant's 18<sup>th</sup> birthday, on December 24, 2010.

The record contains New Jersey academic records reflecting that the applicant was enrolled in high school in New Jersey between 2006 and 2008, and that her mother was listed as her parent or guardian on the school records. In addition, New York, New Jersey, and U.S. federal income tax return documentation contained in the record reflect further that the applicant's mother claimed the applicant as a full-time dependent in her home in 2006, 2007, 2009 and 2010. Review of the applicant's mother's Application for Naturalization (Form N-400), signed by the applicant's mother under penalty of perjury on January 28, 2003, and affirmed by her on April 16, 2004, also reflects that her mother stated on the Form N-400, that the applicant lived with her in New York.<sup>3</sup>

Upon review, we find that the applicant has established by a preponderance of the evidence, that after her mother's naturalization as a U.S. citizen on May 7, 2004, and prior to the applicant's 18<sup>th</sup> birthday, on December 24, 2010, she resided in the United States in the legal and physical custody of her mother pursuant to a lawful admission for permanent residence. The applicant therefore meets the requirements set forth in section 320(a)(3) of the Act.

The burden of proof rests on the claimant to establish the claimed citizenship by a preponderance of the evidence. *See* 8 C.F.R. § 341.2(c). Here, the applicant has established that all conditions for automatic acquisition of U.S. citizenship pursuant to section 320 of the Act have been met. Accordingly, the appeal will be sustained.

### *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.

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<sup>3</sup> Evidence that the applicant was issued a U.S. passport is also contained in the record.