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: NOV 07 2014 Office: NEWARK, NJ 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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Newark, New Jersey (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 The director's decision will be withdrawn and the matter remanded for entry of a new decision.

Pertinent Facts and Procedural History

The record reflects that the applicant was born on July in Colombia. The applicant's mother, became a U.S. citizen upon her naturalization on March 18, 2005, when the applicant was 17 years old. The applicant was born out of wedlock. The applicant was admitted to the United States as conditional permanent resident on March 31, 2001, when he was 14 years old. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship through his mother 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 timely remove the conditions on his permanent residency and was therefore not residing in the United States pursuant to a lawful admission for permanent residence. *See* Decision of the Field Office Director, dated February 11, 2013.

On appeal, the applicant, through counsel, maintains that the director erred in finding that he was not a lawful permanent resident. *See* Statement of the Applicant on Form I-290B, Notice of Appeal or Motion. The applicant, citing to 8 C.F.R. § 216.4(a)(2), states that he was not required to file a separate Form I-751, Petition to Remove Conditions on Residence, and that his conditions were automatically removed upon the approval of his mother's Form I-751. *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 (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 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.

Remand

The director denied the application upon finding that the applicant had failed to remove the conditions on his residence and was therefore not a lawful permanent resident. The record indicates that the applicant was admitted to the United States as a conditional permanent resident on March 31, 2001. Pursuant to the regulation at 8 C.F.R. § 216.4(a)(2), the applicant was not required to file a separate Form I-751 to remove the conditions on his residence. Thus, the applicant obtained lawful permanent residence as his mother's dependent child. The director's decision must therefore be withdrawn.

Nevertheless, the record reflects that the applicant departed from the United States in January 2002 and re-entered, without inspection, in February 2010. The term *lawfully admitted for permanent residence* means:

> The status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed. Such status terminates upon entry of a final administrative order of exclusion, deportation, or removal.

8 C.F.R. § 1.2. We note that the applicant was under the age of 18 when he departed the United States. Intent to abandon lawful permanent residence may be imputed to a child. *See Matter of Huang*, 19 I&N Dec. 749 (BIA 1988)(concluding that a mother and her children abandoned their lawful permanent resident status based solely on the mother's intent); *Matter of Zamora*, 17 I. & N. Dec. 395, 396 (BIA 1980)(holding that a "voluntary and intended abandonment by the mother is imputed" to a minor child). The record, however, suggests that the applicant's mother remained in the United States as a lawful permanent resident and later a naturalized citizen. In order to acquire U.S. citizenship automatically upon his mother's naturalization, the applicant must have been residing with his mother in the United States.

On remand, the director shall consider whether, when the applicant's mother naturalized in 2005 and before the applicant's eighteenth birthday, the applicant was "residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence" such that he could automatically acquire U.S. citizenship upon his mother's naturalization under section 320 of the Act. The director will then issue a new decision which, if adverse to the applicant, shall be certified to the AAO for review.

ORDER: The director's decision is withdrawn and the matter remanded for entry of a new decision, which if adverse to the applicant, shall be certified to the AAO for review.