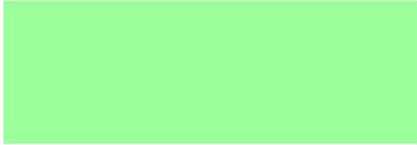




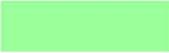
**U.S. Citizenship
and Immigration
Services**

(b)(6)

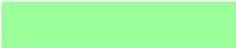


Date: **OCT 28 2014**

Office: QUEENS, NY

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 Queens Field Office in New York (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 Taiwan on January [REDACTED] to married parents. She was admitted into the United States as a lawful permanent resident on September [REDACTED] when she was six years old. Her father became a naturalized U.S. citizen on February 10, 2011, when she was twelve years old. The applicant 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 father.

In a decision dated October 8, 2013, the director determined that the applicant failed to establish, by a preponderance of the evidence, that she resided in her U.S. citizen father's physical custody, as required under section 320(a)(3) of the Act. The application was denied accordingly. On appeal, the applicant submits additional evidence to establish that she resides in the physical custody of her father.

We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3rd Cir. 2004).

Applicable Law

The applicable law for derivative citizenship purposes is "the law in effect at the time the critical events giving rise to eligibility occurred." *Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th 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 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, 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.

The regulation provides, in pertinent part, at 8 C.F.R. § 320.1(1)(i) that *legal custody* is presumed, in part, in the case of “[a] biological child who currently resides with both natural parents (who are married to each other, living in marital union, and not separated.)” 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 [her] principal, actual dwelling place in fact, without regard to intent.

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). 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 issue in this case is whether the applicant resided in the United States in her father’s physical custody prior to her 18th birthday. Employment and federal and state tax evidence contained in the record is consistent with claims made on the applicant’s Form N-600, and reflects that the applicant’s father works and lives in New York with his wife, the applicant, and their family; and that the applicant’s father claimed the applicant as a full-time dependent in his home in 2011, 2012, and prior to his naturalization. Upon review, the applicant has established, by a preponderance of the evidence, that she resides in her father’s physical custody. In addition, the record reflects that the applicant’s father has legal custody over the applicant, as her parents are married and live together. The record also reflects that the applicant is under the age of 18, and that she was admitted into the United States as a lawful permanent resident on September 10, 2005, when she was six years old. Accordingly, the age and lawful permanent residence requirements contained in section 320 of the Act have also been met.

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.