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

U.S. Citizenship and Immigration Services

(b)(6)

Date: APR 02 2015 Office: KENDALL FIELD OFFICE 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,

for

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Kendall Field Office Director, Miami, Florida 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 the applicant's certificate of citizenship.

Pertinent Facts and Procedural History

The applicant was born on , in Cuba. The applicant's father, became a U.S. citizen upon his naturalization on September 28, 2010, when the applicant was years old. The applicant's mother is not a U.S. citizen. It is unclear from the record when the applicant's parents were married, but a divorce decree indicates that they divorced on 2003, in Cuba. The applicant was admitted to the United States as a lawful permanent resident on February 11, 2012, when he was years old. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship through his father 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 had failed to submit documentation to establish that he was in the physical custody of his U.S. citizen parent. *See* Decision of the Field Office Director, dated March 14, 2014.

On appeal the applicant maintains that he is eligible for citizenship under section 320 of the Act. With Form I-290B, Notice of Appeal or Motion, the applicant submits a statement that at the time he filed the application he was a minor residing in the full physical custody of his father and has been residing with his father since he entered the United States on February 11, 2012. With the appeal the applicant submits a copy of his father's 1040A income tax return from 2012, a letter from the Florida Department of Children and Families, and a notarized statement from his mother. The record also contains a copy of the father's naturalization certificate and U.S. passport, a statement from the applicant's mother granting permission for him to "obtain American citizenship", and the parents' divorce decree.

Applicable Law

We review 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.

Analysis

The record indicates that the applicant was admitted to the United States as a lawful permanent resident and that his father naturalized prior to the applicant's 18th birthday. The applicant's parents were divorced in 2003, but the divorce decree does not contain a custody order. The applicant's mother signed a notarized statement on September 23, 2013, giving her authorization for the applicant to "obtain American citizenship". At issue in this case is whether the applicant can establish that he was residing in his father's legal and physical custody.

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 child of divorced or legally separated parents . . . where there has been an award of primary care, control, and maintenance of a minor child to a parent by a court of law or other appropriate government entity pursuant to the laws of the state or country of residence." Additionally, the regulation at 8 C.F.R. § 320.1 provides that "[t]here may be other factual circumstances under which [U.S. Citizenship and Immigration Services] will find the U.S. citizen parent to have legal custody for purposes of the CCA."

The evidence in the record establishes that the applicant has been residing with his father since his admission to the United States in 2012, when he was years old, and therefore the applicant's father had physical custody over the applicant prior to the applicant's 18th birthday. The record includes the father's 1040A income tax return from 2012 that lists the applicant as a dependent; a school printout, dated October 4, 2013, listing the applicant's father as parent/guardian; a Notice of Case Action from the Florida Department of Children and Families, dated January 30, 2014, addressed to the applicant's father and concerning a Medicaid application submitted by the father for both the applicant and his father; and a notarized statement from his mother, dated April 2, 2014, that the applicant emigrated on February 11, 2012, to "reside permanently with his father" who "since that date has permanently the total and full custody...."

Where, as here, a child's parents are divorced but there is no formal, judicial custody order, the parent having "actual, uncontested custody" will be regarded as having "legal custody" of the child. *Bagot v. Ashcroft*, 398 F.3d 252, 266-67 (3d Cir. 2005) (citing *Matter of M-*, 3 I&N Dec. 850, 856 (Cent. Office 1950)). The regulations further provide that "other factual circumstances" may warrant a finding of legal custody. The evidence in the record indicates that the applicant has been in his father's "actual, uncontested custody" since his admission to the United States. *See e.g.* the

mother's notarized statements, school records, the father's 2012 income tax return, and the Notice of Case Action to the father from the Florida Department of Children and Families.

The applicant has established, by a preponderance of the evidence, that he was residing in his U.S. citizen father's legal and physical custody pursuant to a lawful admission as a permanent resident while under the age of 18 as is required under section 320(a) of the Act.

Conclusion

It is the applicant's burden to establish the claimed citizenship by a preponderance of the evidence. Section 341(a) of the Act, 8 U.S.C. § 1452(a); 8 C.F.R. § 341.2(c). Here, that burden has been met.

ORDER: The appeal is sustained. The matter is returned to the field office for issuance of a certificate of citizenship to the applicant.