



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

(b)(6)

DATE: **APR 14 2015**

OFFICE: LOS ANGELES

FILE: [REDACTED]

IN RE: [REDACTED]

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 in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Los Angeles, California denied the application for a certificate of citizenship and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born in India on [REDACTED]. The applicant's parents are [REDACTED]. The applicant's parents were married on [REDACTED] 1992 and remained married. The applicant's father became a U.S. citizen through naturalization on [REDACTED] 2007, when the applicant was nine years of age. The applicant entered the United States as a lawful permanent resident, IR-2, on September 19, 2009. The applicant seeks a Certificate of Citizenship under former section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, claiming that he derived citizenship through her father

The applicant's Form N-600 application was approved on March 1, 2010. However, after the applicant failed to attend two appointments to take the oath of allegiance to the United States, the Field Office Director sent the applicant a Service Motion to Reopen the N-600 application, dated February 3, 2014, and the applicant was given fifteen days to respond. The applicant failed to appear and the Field Office Director determined that the applicant's Form N-600 application was abandoned<sup>1</sup> and, on August 19, 2014, denied it accordingly. The Field Office Director also indicated that the applicant departed the United States on October 4, 2009, and noted that under section 320 of the Act, he must be residing in the United States in the legal and physical custody of her U.S. citizen parent. As such, the applicant was also determined to be ineligible for a certificate of citizenship under section 320 of the Act.

On appeal, the applicant's father contends that his son was unable to appear for his oath ceremony, as her grandmother was seriously ill and needed the applicant and his family to care for her.

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 applicable law for derivative citizenship purposes is that 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, Pub. L. No. 106-395, 114 Stat. 1631 (CCA), applies to this appeal because the applicant was not yet 18 years old as of the February 27, 2001 effective date of the CCA. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 156 (BIA 2001) (en banc). Section 320(a) of the Act provides:

- (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:

<sup>1</sup> 8 C.F.R. § 103.2(b)(15) states that a denial due to abandonment may not be appealed, but an applicant may file a motion to reopen under §103.5. However, the Field Office Director, in its Service Motion to Reopen, dated February 3, 2014, does not indicate that the applicant's Form N-600 will be denied for abandonment upon failure to respond in fifteen days. Further, the Field Office Director's denial decision, dated August 19, 2014, states that the applicant may appeal the denial decision by filing a Form I-290B. As such, the applicant's Form I-290B appeal, and his eligibility under section 320 of the Act, will be considered.

- (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.

Here, the applicant meets all of the requirements set forth in section 320(a) of the Act. First, the applicant's father became a citizen of the United States by naturalization when the applicant was nine years old. Second, the applicant entered the United States as a lawful permanent resident on September 19, 2009. Third, the applicant was born in wedlock and it is presumed that a U.S. citizen parent has legal custody over a child, absent evidence to the contrary, when a biological child resides with both biological parents who are married to each other, living in marital union and not separated. Accordingly, the record establishes that all the conditions for the automatic acquisition of U.S. citizenship pursuant to section 320 of the Act have been met.<sup>2</sup>

The record contains letters from the applicant's naturalized parent requesting that the applicant's certificate of citizenship be mailed. However, 8 C.F.R. § 341.7 states that if an applicant's Form N-600, Application for a Certificate of Citizenship, is granted, delivery of the certificate shall be made after the applicant takes and subscribes to the oath of renunciation and allegiance before a member of the service within the United States. The record reflects that the applicant has failed to take the oath of allegiance. Accordingly, the applicant is required to take the oath of allegiance prior to receipt of his citizenship certificate. As the applicant is currently residing in the United States arrangements should be made for him to appear at a USCIS office so that he can take the oath and receive his certificate.

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 met this burden. Accordingly, the decision of the Field Office Director will be withdrawn, the appeal will be sustained and the matter will be returned to the Field Office Director for further action in accordance with this decision.

**ORDER:** The appeal is sustained.

<sup>2</sup> The Field Office Director indicated that the applicant departed the United States in October 4, 2009. Accordingly, it was determined that, as the applicant was no longer residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence, he failed to satisfy the requirements of section 230(a)(3) of the Act. However, an applicant's eligibility is established at the time of filing. *Matter of Katigbak*, 14 I&N Dec. 45 (Comm. 1971). Further, section 230(a) of the Act states that a child born outside the United States automatically becomes a citizen of the United States when the requirements under this section are fulfilled, so the applicant's citizenship vested upon fulfillment of the last statutory requirement. *See In re Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).