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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

DATE: AUG 0 6 2015

IN RE:

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

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO**.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Chicago, Illinois, denied the application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on in the Philippines to and The applicant's parents were married in in Philippines.[1] They subsequently divorced on pursuant to a Judgment of Dissolution of Marriage entered in , Illinois.[2] The applicant became a lawful permanent resident on June 14, 2005, as the derivative beneficiary of her father's approved Immigrant Petition for Alien Worker (Form I-140), and her father filled out an Application for Certificate of Citizenship (Form N-600) for her, which she filed October 11, 2010. The applicant's father became a U.S. citizen upon his naturalization on The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship through her father pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The director determined that the applicant failed to meet all the citizenship requirements of section 320 of the Act and, in particular, failed to respond to a Request for Additional Evidence (RFE) by providing proof she lived in her father's legal and physical custody before turning 18. On appeal, the applicant submits additional evidence supporting her claim to have lived with her father.

We conduct appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Because the applicant was born abroad, she 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).

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:
>
> (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 record establishes that the applicant was a lawful permanent resident since the age of 12 and that her father became a U.S. citizen two weeks before she turned 18. The only issue on appeal is

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[1] The record reflects a civil ceremony on as well as the religious ceremony referenced on the applicant's birth certificate.

[2] The applicant's father remarried on in Illinois.

whether she met the requirements of section 320(a)(3) of the Act by residing in her father's legal and physical custody before turning 18. Immigration records confirm the applicant's claim to have last arrived here in 2002 before adjusting status to that of lawful permanent resident in 2005 as a derivative beneficiary of her father's employment-based petition. Although the applicant points to documentation -- including the 2003 Application to Register Permanent Resident or Adjust Status and a related 2003 Affidavit of Support (Form I-134) filed by her father, and the 2002 Medical Examination of Aliens Seeking Adjustment of Status (Form I-693) signed by a civil surgeon -- showing a common address as supporting her contention to have lived with her father after arriving in the United States, we note the applicant's mother filed a 2002 Application to Extend/Change Nonimmigrant Status (Form I-539) for herself and the applicant using another Illinois address. Although requested to provide additional evidence, the applicant did not provide sufficient documentation (e.g., school records, medical records, tax returns) to establish by a preponderance of the evidence with which parent she lived from the time she arrived in the United States until she turned 18. Therefore, we conclude she has not met the physical custody requirement.

While determining the evidence to be inconclusive as to whether the applicant's father ever had physical custody of his daughter in the United States, we conclude that a preponderance of the evidence establishes he had legal custody. Legal custody vests "[b]y virtue of either a natural right or a court decree." *Matter of Harris,* 15 I&N Dec. 39 (BIA 1970). The Board of Immigration Appeals has stated, "we will presume that the father has not been divested of his natural right to equal custody in the absence of affirmative evidence indicating otherwise." *Matter of Rivers,* 17 I&N Dec. 419, 422-23 (BIA 1980). In the absence of a judicial order granting custody to the naturalized parent upon legal separation, 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).

Stating that two children were born to the applicant's father and mother, the divorce decree did not address custody, despite awarding the applicant's mother $300 per month for child support.[3] There is no evidence the applicant's father ever lost legal custody. Absent a court decree granting legal custody of the applicant to her mother, it appears the applicant's father and mother had joint legal custody of the applicant. However, without evidence showing the applicant resided with her father at some point between her 2002 U.S. arrival and her eighteenth birthday in we cannot conclude he ever regained physical custody, and the applicant has therefore not satisfied all of the conditions for citizenship under section 320(a) 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 met this burden. Accordingly, the matter will be returned to the director for further action in accordance with this decision.

ORDER: The appeal is dismissed.

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[3] Immigration records show that neither the applicant nor her mother was in the United States at the time of the divorce, which was entered as a default judgment after a judge found that the parties had lived separate and apart since December 4, 1997. Immigration records confirm that the applicant's father entered the United States on that date, while the applicant's mother did not enter for the first time until 2002 together with the applicant.