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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

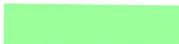


U.S. Citizenship
and Immigration
Services

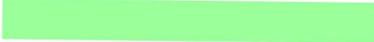


Date: FEB 03 2015

Office: BALTIMORE, MD

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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg

Chief, Administrative Appeals Office

DISCUSSION: The District Director, Baltimore, Maryland (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 dismissed.

Pertinent Facts and Procedural History

The record reflects that the applicant was born on [REDACTED] in Nigeria. The applicant was born out of wedlock. His mother, [REDACTED] is not a U.S. citizen. The applicant's father, [REDACTED] derived U.S. citizenship. The applicant was admitted to the United States as lawful permanent resident on January 31, 1998, when he was [REDACTED] 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, in relevant part, that the applicant was not in his father's custody as required by section 320(3) of the Act. *See* Decision of the District Director, dated March 30, 2010. The director also considered the applicant's citizenship claim under sections 301, 309 and 321 of the Act, 8 U.S.C. §§ 1401, 1409, and 1432, and found that the applicable was ineligible for a certificate of citizenship under any provision of the Act. *Id.*¹

On appeal, the applicant, through counsel, maintains that he remained in his father's legal and physical custody despite his father's incarceration. *See* Brief in Support of Appeal. The applicant states that he moved to the United States, that his mother consented to his move, and that he thereafter resided in his father's legal and physical custody. *Id.* The applicant states that his father maintained custody over him, even though his grandmother was appointed as his guardian. *Id.*

Applicable Law

We review these proceedings *de novo*. 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.

¹ We find that the director properly determined that the applicant is ineligible for citizenship under sections 301, 309 and 321 of the Act. The applicant does not contest the director's determination in this regard. We will therefore only address the issue of eligibility for citizenship under section 320 of the Act, as amended by the CCA.

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.

Analysis

The record indicates that the applicant was admitted to the United States as a lawful permanent resident prior to his eighteenth birthday and that his father was a U.S. citizen at that time. The applicant was born out of wedlock, although the applicant was legitimated by his father under the laws of Nigeria and the State of Maryland. The applicant entered the United States in January 1998 and, in April 1998, his father was incarcerated. In December 1998, the applicant's paternal grandmother was appointed as his guardian. At issue in this case is whether the applicant can establish that he was in his father's legal and physical custody.

The regulations at 8 C.F.R. § 320.2, provide that the requirements set forth in the CCA must "have been met after February 26, 2001." Therefore, the applicant must establish that he was in the legal and physical custody of his father on or after February 27, 2001 in order to automatically acquire U.S. citizenship under section 320 of the Act. Under the regulation, legal custody "refers to the responsibility for and authority over a child." See 8 C.F.R. § 320.1 (defining "legal custody"). Legal custody is presumed "[i]n the case of a child of biological child born out of wedlock who has been legitimated and currently resides with the natural parent." Additionally, the regulation at 8 C.F.R. § 320.1 provides that "[t]here may be other factual circumstances under which [USCIS] will find the U.S. citizen parent to have legal custody for purposes of the CCA." The applicant was not residing with his father and thus legal custody cannot be presumed pursuant to the definition above.

The applicant maintains that "other factual circumstances" establish that his father maintained legal custody despite his incarceration. The applicant states that his father was not stripped of his legal custody. He explains that guardianship and custody are distinct concepts under Maryland law such that his grandmother's guardianship appointment does not preclude his father's custody. See Appeal Brief at 6 (citing *inter alia* Md. Code Ann., Fam. Law § 9.5-101(d) and Md. Code Ann., Est. & Trusts § 13-702).

The record indicates that the applicant resided with his father for a few months prior to his incarceration, but before February 27, 2001, the effective date of the CCA. The applicant has

since been residing with and under the guardianship of his grandmother. Even if “other factual circumstances” present in the record suggest that the applicant’s father retained legal custody, there is no evidence in the record that the applicant was in his father’s physical custody at any time between February 27, 2001 and his eighteenth birthday. The applicant maintains that physical custody under Maryland law refers to the “right and obligation to provide a home for the child.” See Appeal Brief at 5 (citing *Taylor v. Taylor*, 508 A.2d 964, 967 (MD. 1986)). Maryland law defines “physical custody” as the “physical care and supervision of a child.” See Md. Code. Ann., Fam. Law § 9.5-101(o). The court in *Taylor*, *supra*, stated that physical custody also refers to making “the day-to-day decisions required during the time the child is actually with the parent having such custody.” *Taylor*, 508 A.2d at 967.

There is no evidence in the record to demonstrate that the applicant’s father retained the “right and obligation to provide a home for the child and to make the day-to-day decisions required during the time the child is actually with the parent having such custody.” *Id.* To the contrary, the record demonstrates that the applicant was residing with his grandmother and, as his court-appointed guardian, she was responsible for providing a home and making day-to-day decisions for the applicant. Consequently, the applicant has failed to demonstrate that he met the condition described at section 320(a)(3) of the Act of residing in the physical custody of his father during the applicable period of time.

Conclusion

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 341(a) of the Act, 8 U.S.C. § 1452(a); 8 C.F.R. § 341.2(c). Here, that burden has not been met.

ORDER: The appeal is dismissed. The application remains denied.