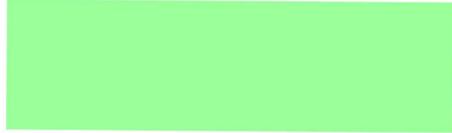




U.S. Citizenship  
and Immigration  
Services

(b)(6)

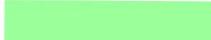


Date: FEB 09 2015

Office: MIAMI, FL

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:

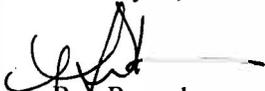
SELF-REPRESENTED

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,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Miami, Florida (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.

*Pertinent Facts and Procedural History*

The record reflects that the applicant was born out of wedlock on [REDACTED] 1994 in Cuba. The applicant's mother, [REDACTED] became a U.S. citizen upon her naturalization on [REDACTED], 2012, when the applicant was [REDACTED] years old. The applicant's father, [REDACTED] is not a U.S. citizen. The applicant's parents were married in Cuba in 1998. The applicant was admitted to the United States as lawful permanent resident on [REDACTED], 2001, when he was [REDACTED] years old. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship through his mother 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 determined that the applicant failed to establish that he was in his mother's physical custody and, as such, did not automatically acquire U.S. citizenship upon her naturalization. The application was denied accordingly. *See* Director Decision, dated March 4, 2014.

On appeal, the applicant submits additional documentation listing his address including letters from the [REDACTED] dated in January and February 2012; a child support statement addressed to his father dated in June 2012; his mother's pay stubs dated in 2014; food stamps statements dated in 2011, 2013, and 2014; a letter from [REDACTED] dated in 2013; and his university transcripts dated in 2014.

*Applicable Law*

We conduct appellate review on a *de novo* basis. 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 "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)).

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 (9<sup>th</sup> 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.

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.

Section 101(c) of the Act, 8 U.S.C. § 1101(c) states, in pertinent part, that for Title III naturalization and citizenship purposes:

The term “child” means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child’s residence or domicile, or under the law of the father’s residence or domicile, whether in the United States or elsewhere . . . if such legitimation . . . takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating . . . parent or parents at the time of such legitimation . . . .

*Analysis*

The applicant’s parents’ were married in 1998 in Cuba. The applicant was born prior to his parents’ marriage, therefore he was born out of wedlock. Thus, at the outset, we must determine if the applicant was legitimated under the law of the applicant’s or his father’s residence or domicile. Under Cuban law, children born after 1975 are deemed legitimate whether they are born in or out of wedlock. *See Matter of Martinez*, 18 I. & N. Dec. 399 (BIA 1983). Under the laws of the State of Florida, a child is legitimated by the subsequent marriage of his natural parents. *See* Section 742.091 of Florida Statutes (1992). The applicant was therefore legitimated for purposes of acquisition of citizenship.

The question remains, however, whether the applicant can establish that he was residing in his mother’s legal and physical custody prior to his eighteenth birthday. Legal custody vests by virtue of “either a natural right or a court decree.” *See Matter of Harris*, 15 I&N Dec. 39, 41 (BIA 1970). The regulations define legal custody as “the responsibility for and authority over a child.” *See* 8 C.F.R. § 320.1. Additionally, the regulations provide that legal custody will be presumed “[i]n the case of a biological child born out of wedlock who has been legitimated and currently resides with the natural parent.” 8 C.F.R. § 320.1. The Act defines the term

“residence” as “the place of general abode . . . his principal, actual dwelling place in fact, without regard to intent.” Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33).

The evidence in the record indicates that in 2012, before the applicant’s eighteenth birthday, he was residing with his mother. The applicant indicates that his parents were separated, and the record contains a child support statement addressed to the applicant’s father suggesting that the applicant was residing with his mother. The applicant’s mother is listed as “head of household” in her 2012 federal income tax return. The record also contains evidence that the applicant used his mother’s mailing address and that he was listed as her dependent for tax purposes. Legal custody can therefore be presumed under the regulation where, as here, the applicant was born out of wedlock, legitimated, and residing “with the natural parent.” The record, by a preponderance of the evidence, establishes that the applicant was residing in his mother’s legal and physical custody prior to his eighteenth birth such that he acquired U.S. citizenship upon her naturalization

*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). Here, that burden has been met.

**ORDER:** The appeal is sustained. The matter is returned to the Miami Field Office for issuance of a certificate of citizenship