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: JUL 0 2 2015

FILE #:
APPLICATION RECEIPT #:

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:

INSTRUCTIONS:

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, Philadelphia, Pennsylvania, 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 Dominican Republic to and The applicant's parents divorced in 1994. The applicant's father became a U.S. citizen upon his naturalization on January 7, 2003. The applicant was admitted to the United States as lawful permanent resident on June 12, 2003 on the immigrant petition of her stepmother. 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 at the time of filing and, accordingly, denied the application. On appeal, the applicant claims that the denial was erroneous and contends there is evidence on record that she resided in her father's custody upon arriving in the United States.

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, 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).

Section 320 of the Act, as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (CCA), is applicable because the applicant was not yet 18 years old as of the February 27, 2001 effective date of the CCA.[1] *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.

As the record reflects the applicant meets the first two conditions, we examine the record for evidence that she resided in the legal and physical custody of her father after being admitted and before her 18th birthday, between June 12, 2003 and August 14, 2004 ("the relevant period). The applicant's biological mother is not a U.S. citizen.

[1] The applicant was years old on February 27, 2001.

The regulation at 8 C.F.R. § 320.2 provides that the requirements set forth in the CCA must "have been met after February 26, 2001." Therefore, the applicant must establish that she was in the legal and physical custody of her father on or after her June 12, 2003 admission to the United States in order to automatically acquire U.S. citizenship under section 320 of the Act. 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." The applicant's parents' divorce decree does not contain a custody award.

The regulation at 8 C.F.R. § 320.1 further provides, however, 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." 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).

As there is no judicial custody determination in the matter before us, the parent having actual, uncontested custody is viewed as having legal custody. *See Id.* Here, there is nothing on record showing the applicant's father lived together with the applicant during the relevant period, although tax returns and other evidence indicate he lived at the address where she resided before the applicant arrived in the country. Specifically, documentation supports the applicant's claim to have lived at an NY address while attending high school, but fails to establish that she lived at this address with her father. Immigration records suggest that as late as the months prior to the applicant's arrival, her father lived with her stepmother at the address where the applicant began residing. However, in response to two Requests for Evidence (RFE) from the director seeking proof of a common residence, the applicant was unable to demonstrate she resided with her father at any time. She acknowledges this omission by stating, "I can't find any documentation stating where he lived at during the dates of June 12, 2003 thru August 14, 2004." *Applicant's RFE Response Statement*, March 26, 2014. None of the documents submitted in response to the RFEs – school transcript, health insurance card, copy of passport page, hospital records, etc. – link the applicant and her father to the same physical address during the relevant period. It is thus unclear from the evidence that when the applicant took up residence in her father still lived at that location. Nor are there any statements from the applicant's father or former stepmother on the issue of the residence of the applicant's father during the relevant period. Immigration records reflect that by the time her father filed an immigrant petition for his mother on March 9, 2005, his address of record was in PA, but there is no indication for how long he had been living there. Without showing that she lived with her father at some point during the 14 months following her admission, the applicant is unable to establish she lived in her father's legal and physical custody during the relevant period.

The evidence in the record is insufficient to warrant a finding that the applicant was in her father's legal or physical custody after arriving in the United States. Accordingly, the applicant did not meet the requirements for automatic acquisition of U.S. citizenship under section 320 of the Act.

The burden of proof rests on the applicant to establish the claimed citizenship by a preponderance of the evidence. *See* 8 C.F.R. § 341.2(c). Here, the applicant has not met this burden.

ORDER: The appeal is dismissed.