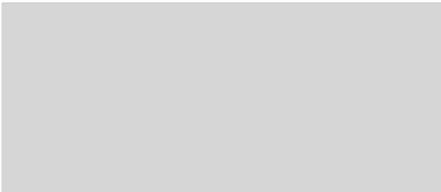


(b)(6)

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



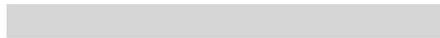
U.S. Citizenship
and Immigration
Services



DATE: JUL 16 2015

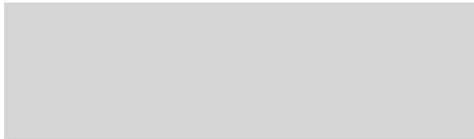


IN RE: Applicant:



APPLICATION: Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act; 8 U.S.C. § 1431

ON BEHALF OF APPLICANT:



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,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Hartford, Connecticut, denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a citizen of Pakistan who was born in the United Arab Emirates on [REDACTED]. The applicant's parents were married at the time of his birth. The applicant entered the United States with an immigrant visa and was granted lawful permanent residency in the United States on August 8, 2007 when he was [REDACTED] years of age. The applicant's father became a U.S. citizen through naturalization on [REDACTED], when the applicant was [REDACTED] years of age. Prior to the naturalization of his father, the applicant was arrested and incarcerated on July 6, 2011. The applicant seeks a certificate of citizenship claiming that he derived U.S. citizenship from his father pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The Field Office Director determined that the applicant failed to establish that he was residing in the legal and physical custody of his U.S. citizen father at any time after his father's naturalization and prior to his eighteenth birthday. The Form N-600, Application for Certificate of Citizenship, was accordingly denied. *See Decision of the Field Office Director*, dated March 24, 2015.

On appeal, the applicant, through counsel, states that he satisfied all the requirements for derivative citizenship under section 320 of the Act, contending that he remained in his father's legal and physical custody after his incarceration on July 6, 2011.

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 (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, 8 U.S.C. § 1431(a), provides:

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 indicates that the applicant was admitted to the United States as a lawful permanent resident on August 8, 2007, prior to his eighteenth birthday, and that his father became a naturalized U.S. citizen on [REDACTED] also prior to the applicant's eighteenth birthday. The issue is whether the applicant was residing in the United States in the legal and physical custody of his U.S. citizen father at any point after his father naturalized, on [REDACTED] and before he turned eighteen years of age, on [REDACTED].

The record indicates that the applicant was arrested in Maryland on July 6, 2011 by officers [REDACTED]. At the time of his arrest, the applicant and his family, including both parents, resided in the state of Maryland. The record further indicates that upon his arrest, the applicant was placed into custody at the [REDACTED] Center at [REDACTED] Pennsylvania, and arraigned as an adult on October 24, 2011. The applicant subsequently pled guilty to the charge of conspiracy [REDACTED] in the U.S. District Court in [REDACTED] Pennsylvania, on May 4, 2012. On April 17, 2014, the applicant was sentenced to five years incarceration. The record indicates that the applicant has not been released from federal custody since his arrest and detention on July 6, 2011.

On July 6, 2011, the applicant was placed in custody at the [REDACTED] Center at [REDACTED] Pennsylvania. The applicant remained in custody from July 6, 2011 through his father's naturalization on [REDACTED] and his eighteenth birthday on [REDACTED]. Counsel for the applicant asserts that even though the applicant was not physically present in his family's home at the time of his father's naturalization, the family home was the applicant's legal residence during his juvenile detention.

Maryland law defines "physical custody" as the "physical care and supervision of a child." Md. Code. Ann., Fam. Law § 9.5-101(o). Physical custody means the right and obligation to provide a home for the child and to make the day-to-day decisions during that time. *Taylor v. Taylor*, 306 Md. 290, 508 A.2d 964 (1986).

The Pennsylvania Department of Public Welfare (DPW) Regulations, 55 PA Code, Chapter 3800, govern child residential institutions in Pennsylvania, including the [REDACTED] Center. DPW regulations define secure detention as "a type of secure care located in a temporary 24-hour living setting, in which one or more delinquent or alleged delinquent children are detained, generally in a preadjudication status." Definitions, 55 PA ADC § 3800.5. "Secure Care" is defined as "care provided in a 24-hour living setting to one or more children who are delinquent or alleged delinquent, from which voluntary egress is prohibited. *Id.* The requirements for facilities in which secure care is provided state that children "shall be supervised at all times during awake hours," and "shall be supervised by conducting observational checks of each child within 15 minutes during

sleeping hours.” Additional Requirements, 55 PA ADC § 3800.274. Nothing in the record indicates that the actual detention of the applicant deviated from these requirements. The DPW regulations indicate that the [REDACTED] Center was tasked with providing the applicant, subsequent to his arrest on July 6, 2011, with a temporary living setting in which the center made decisions concerning his day-to-day care. Accordingly, the center, in accordance with Maryland law, exercised physical custody over the applicant during his detention.

The Pennsylvania DPW regulations hold that secure care is permitted even in cases of children who are alleged delinquent. Criteria, 55 PA ADC, § 3800.271. Therefore, even if the applicant were in pre-dispositional hearing status when his father was naturalized and when he turned eighteen years of age, and until October 24, 2011, he was detained and under the physical custody of the authorities rather than his father.

As the applicant ceased to be in the physical custody of his father on the date he was taken into federal custody, the applicant did not derive citizenship from his father pursuant to section 320(a)(3) of the Act.

With respect to the legal custody of the applicant following his arrest, the applicant, through counsel, contends that at the time of his father’s naturalization, the applicant was detained pursuant to an allegation of juvenile delinquency, which is insufficient to rebut the presumption that a U.S. citizen parent has legal custody and lawful authority over a child in accordance with 8 C.F.R. § 320.1. However, 8 C.F.R. § 320.1 also indicates that this presumption of legal custody and lawful authority only exists absent evidence to the contrary. Counsel also notes that at the time of his father’s naturalization, no family or criminal court had issued any order terminating or affecting legal custody in any manner. However, as we have already determined that the applicant was not in the physical custody of his father at the time of his father’s naturalization, and therefore the applicant did not derive citizenship from his father pursuant to section 320 of the Act, we find it unnecessary to determine whether the applicant remained in the legal custody of his naturalized father following his arrest.

The applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). Here, the applicant has not established that he met all of the conditions for the automatic derivation of U.S. citizenship pursuant to section 320 of the Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.