



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUL 31 2015

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

Thank you,



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Miami, Florida 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.

The record reflects that the applicant was born on [REDACTED], in [REDACTED] Cuba. The applicant is a lawful permanent resident of the United States, her status having been adjusted effective August 2, 2003. The applicant's mother became a naturalized U.S. citizen on March 20, 2009, when the applicant was nine years old. The record indicates that the applicant's father is not a U.S. citizen and resides in Cuba. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship through her 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).

On November 14, 2011, the Field Office Director denied the application finding that the applicant did not respond to a request for additional evidence concerning her mother's legal and physical custody over her.

The applicant timely filed an appeal, submitting documentation including tax returns and school records showing her physical residence with her U.S. citizen mother in 2010 and 2011. The applicant also included a document signed by her father indicating his residence in Cuba. Although the appeal was timely filed, we did not receive it until November 3, 2014.

Due to the delay in receipt of the applicant's appeal, the AAO provided the applicant with an opportunity to submit additional evidence in support of her eligibility for a certificate of citizenship. In particular, the applicant was asked to submit documentation that she resided in her mother's legal and physical custody on and after March 20, 2009. The applicant was given 12 weeks to respond with additional evidence and responded in a timely manner.

Pursuant to federal regulations at 8 C.F.R. § 103.2(b)(8), the applicant is allowed 12 weeks from the date of this notice to respond to the AAO and additional time may not be granted.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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). In this case, the critical event was the applicant's mother naturalization as a U.S. citizen. Additionally, 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 her 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.

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. 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. Additionally, if the applicant’s parents were married, as long as the child is in the custody of one parent, it is not required that the parents be legally separated or divorced, under the CCA. Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000).

At issue in this case is whether the applicant was in the legal and physical custody of her U.S. citizen mother, after her mother’s naturalization, and before the applicant’s 18th birthday. The applicant’s mother notes that she was never married to the applicant’s father, and legal custody is therefore presumed, absent evidence to the contrary, if the applicant is residing with her mother. The record establishes that before the applicant’s eighteenth birthday, and after her mother’s naturalization, she was residing with her mother in Florida. In response to a request for evidence, the applicant submitted the following evidence to document her legal and physical custody with her mother: a sworn declaration from the applicant’s mother that the applicant has resided under her legal and physical custody from August 2, 2003 to present; records from ██████████ in ██████████ Florida dated June 17, 2015 showing the applicant’s mother as her only parent/guardian; additional school records for the applicant were also provided showing her attendance at various public schools in ██████████ County in 2010 and 2011; a document from ██████████ showing that the applicant’s mother has a savings account for the applicant and the account was opened in 2009; copies of federal income tax returns from 2009-2014 for the applicant’s mother showing that she is listed “head of household” on her 2010 federal income tax return, where she lists the applicant as a dependent. The record, by a preponderance of the evidence, establishes that the applicant was residing in her mother’s legal and physical custody prior to her 18th birthday such that she acquired U.S. citizenship upon her mother’s naturalization.

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.