

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)

[Redacted]

DATE: **JUN 23 2015**

FILE: [Redacted]

APPLICATION RECEIPT #: [Redacted]

IN RE: Applicant: [Redacted]

APPLICATION: Application for Certificate of Citizenship under former section 321 of the Immigration and Nationality Act, 8 U.S.C. § 1432

ON BEHALF OF APPLICANT:

[Redacted]

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,

R

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, San Francisco, California, denied the Application for Certificate of Citizenship (Form N-600), 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 in Iran on [REDACTED] 1968, and was admitted to the United States on February 13, 1979, as a lawful permanent resident (LPR). The applicant's parents married in 1962 and divorced in 1975. His mother became a naturalized U.S. citizen on November 22, 1985, [REDACTED], and his father naturalized on June 14, 2000, when the applicant was 31. The applicant seeks a certificate of citizenship under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432, claiming that he derived citizenship automatically through his mother's naturalization before he turned 18.

The director determined that the applicant was not eligible for citizenship as claimed, and denied the application accordingly. The director concluded that, because the applicant failed to establish having resided in his mother's custody between November 22, 1985, when she naturalized, and [REDACTED] 1986, when he turned [REDACTED] ("the relevant period"), he was ineligible for a certificate of citizenship under former section 321 of the Act as he did not meet the applicable requirements. The director determined the applicant was unable to meet the custody requirement for automatic derivation of citizenship, as his parents' Iranian divorce decree failed to address custody. The director further found that, after immigrating, the applicant lived primarily with his father, though at the age of [REDACTED] he ran away and lived on his own, except after being arrested and coming under juvenile court supervision. *See Decision of the Field Office Director, October 30, 2014.*

On appeal, the applicant asserts that he meets the requirements for derivative citizenship under former section 321 of the Act through his U.S. citizen mother and, specifically, that he has provided evidence to meet his burden of showing he resided in her custody during the relevant period. Although this section was repealed by the Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), any person who would have acquired citizenship under its provisions before February 27, 2001 may seek a certificate of citizenship at any time. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). In support, he submits a brief. The sole issue on appeal is whether the applicant meets the custody requirement of section 321(a)(3).

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).

Former section 321 of the Act provides, in pertinent part and with emphases added:

(a) A child born outside of the United States of alien parents . . . becomes a citizen of the United States upon fulfillment of the following conditions:

.....

(3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if

the child was born out of wedlock and the paternity of the child has not been established by legitimation; and if

(4) Such *naturalization takes place while such child is unmarried and under the age of eighteen years*; and

(5) Such *child is residing in the United States pursuant to a lawful admission for permanent residence* at the time of the naturalization of the parent last naturalized under clause (1) of this subsection, or the parent naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of eighteen years.

As the record reflects that the applicant's mother naturalized before his [redacted] birthday and the applicant became an LPR upon his U.S. admission and has retained this status, he has satisfied the requirements of subsections (4) and (5). To be eligible for a certificate of citizenship, he must also establish having resided in the legal custody of his mother pursuant to subsection (3).

Construing California law regarding legal custody for citizenship determinations under the Act, the U.S. Court of Appeals for the Ninth Circuit held that "legal custody" refers only to an award of sole legal custody. *U.S. v. Casasola*, 670 F.3d 1023 (9th Cir. 2012) ("In order to confer automatic derivative citizenship in 1997, the custodial parent, upon naturalization, was required to have sole legal custody."). Legal custody vests "by virtue of either a natural right or a court decree." See *Matter of Harris*, 15 I&N Dec. 39 (BIA 1970). However, in the absence of a judicial determination or grant of custody in the case of a legal separation of the naturalized parent, the parent having actual uncontested custody of the child is to be regarded as having "legal custody." *Matter of M*, 3 I&N Dec. 850, 856 (BIA 1950).

After reviewing all the record evidence, we conclude the field office director correctly found the applicant has not established that he resided in the actual uncontested custody of his mother during the relevant period. The applicant claims that he resided with his mother for 1½ months when he was [redacted] but there is no credible evidence on the record to support this assertion. The only documentation submitted referencing any time in his mother's physical custody during the relevant period is a letter from the applicant to his attorney stating that his mother "picked him up" one time from juvenile justice authorities and failing to note a specific time period. Even were we to find the applicant to have produced credible evidence that he lived briefly with his mother, the applicant has failed to establish that, after living on his own since age [redacted] such a temporary living arrangement gave *actual uncontested custody* to the mother he had seldom seen since visiting her home in Switzerland with his sister in the early 1980s. A letter from the applicant's sister to the Probation Department dated December 5, 1989, states that shortly after their arrival in the United States in 1979, their mother remarried and moved to Switzerland, and their father "did not allow our mother to have custody of us." She further states that the applicant resided with their father for the next five years and they would only see their mother once a year. She further states that the applicant ran away from their father when he was fifteen, and "from that point on [the applicant] lived in cars, trucks, and at friends' houses and apartments." There is no reference in this letter or in any other documentation

on the record to the applicant residing in his mother's custody after she left the United States in 1979.

The applicant does not meet the requirements of former section 321, as he has not established by a preponderance of the evidence that he lived with his mother after leaving his father's home at the age of [REDACTED] when he began living on his own or with friends and had several encounters with the juvenile justice system. Documentation on the record indicates that he had little contact with his mother during the relevant period and that she resided outside the United States.

Although the record reflects that he was an LPR when his mother naturalized in 1985, 53 weeks before he turned [REDACTED] the applicant has not established that he resided in the actual uncontested custody his mother during this timeframe.

It is the applicant's burden to establish the claimed citizenship by a preponderance of the evidence. 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.