

(b)(6)

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



U.S. Citizenship
and Immigration
Services



Date: **MAY 06 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,

f 

Ron Rosenberg
Acting 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 Haiti. The applicant's parents were married in [REDACTED]. The applicant's father became a U.S. citizen upon his naturalization on [REDACTED] when the applicant was 11 years old. The applicant's mother is not a U.S. citizen. The applicant was admitted to the United States as lawful permanent resident on October 28, 2000, when she was [REDACTED] years old. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship upon her father's naturalization 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 field office director denied the application finding that the applicant was not residing in the legal and physical custody of her U.S. citizen father on the effective date of the Child Citizenship Act of 2000, February 27, 2001.

On appeal, filed on November 15, 2010 and received by the AAO on November 3, 2014, the applicant maintains that she was residing with her father since her arrival in the United States. The appeal is accompanied by copies of federal income tax returns for the years 2000 to 2004, indicating that the applicant was claimed as a dependent and resided with her father for 12 months during the filing period for each of the tax returns.

The AAO reviews these proceedings *de novo*. 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). 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.

The record indicates that the applicant was admitted to the United States as a lawful permanent resident October 28, 2000, when she was [REDACTED] years old, and that her father naturalized in [REDACTED] prior to her arrival. At issue in this case is whether the applicant can establish that she was residing in the United States in the legal and physical custody of her U.S. citizen father on February 27, 2001, the effective date of the CCA and before she turned 18 years of age.

In this case, the record indicates that the applicant was residing with her father after her admission to the United States. The evidence submitted includes the applicant's father's 2000, 2001, 2002, and 2003, and 2004 federal income tax returns, each listing the applicant as a dependent who resided with her father for the 12 months of each tax year. We note that the statute does not require that the applicant establish that she resided with her father for any particular amount of time, only that she demonstrate that she was in her father's legal and physical custody prior to her eighteenth birthday. We find that the record establishes, by a preponderance of the evidence, that the applicant was residing in her father's legal and physical custody as required under section 320 of the Act.

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 been met.

ORDER: The appeal is sustained.