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

U.S. Citizenship and Immigration Services

Date: MAY 20 2015

IN E: 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:

NO EPRESENTATIVE OF RECO D

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, Helena, Montana, denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

Pertinent Facts and Procedural History

The record reflects that the applicant was born on in the Dominican Republic. The applicant's mother became a U.S. citizen upon her naturalization on when the applicant was 12 years old. The applicant's biological father is not a U.S. citizen. The applicant's parents were married in the Dominican Republic in and divorced there in The applicant's mother remarried a U.S. citizen in the United States in The applicant was admitted to the United States as a lawful permanent resident on August 23, 2011, when he was years old. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship through his 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).

The Field Office Director denied the Form N-600, indicating that the applicant's mother had not been granted legal and physical custody of the applicant by a court of law or other appropriate government entity. *See Decision of the Field Office Director*, dated July 23, 2014. The Field Office Director concluded that a declaration made under oath and signed by the applicant's parents on June 12, 2014, in which the applicant's biological father approved the appointment of lawful guardianship to the applicant's mother, was not sufficient to establish that the applicant was in his mother's legal and physical custody as required by the regulations at 8 C.F.R. § 320.2. *Id.*; *see also Authorization of Guardianship Brought before the Notary Public* (Authorization), June 12, 2014. The Field Office Director also noted that the Authorization was an English translation and the record did not include the original version of the Authorization. *Id.*

On appeal, the applicant's mother indicates she mistakenly submitted only the translation of the Authorization as a response to a request for documentation issued by a court, demonstrating her legal and physical custody of the applicant. *See Letter in Support of Appeal.* To supplement the record, she submits the original version of the Authorization in the Spanish language.

Applicable Law

We review 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 and provides, in pertinent part:

> (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.

It is the applicant's burden to establish the claimed citizenship by a preponderance of the evidence. 8 C.F.R. § 341.2(c). "The 'preponderance of the evidence' standard requires that the evidence demonstrate that the applicant's claim is 'probably true,' where the determination of 'truth' is made based on the factual circumstances of each individual case." *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)).

Analysis

The record indicates that the applicant was admitted to the United States as a lawful permanent resident, and his mother naturalized in [redacted] prior to his eighteenth birthday. The applicant's parents were divorced in [redacted] and the divorce document does not contain a custody order. At issue in this case is whether the applicant can establish that he is residing in the United States in the legal and physical custody of his U.S. citizen mother.

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 regulations, 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." 8 C.F.R. § 320.1(2).

The applicant's parents' divorce document does not include a custody award. In derivative citizenship cases where the parents have legally separated but there is no formal, judicial custody order, the parent having "actual, uncontested custody" will be regarded as having "legal custody" of the child. *Bagot v. Ashcroft*, 398 F.3d 252, 266-67 (3d Cir. 2005) (citing *Matter of M-*, 3 I&N Dec. 850, 856 (Cent. Office 1950)). Additionally, the regulations at 8 C.F.R. § 320.1(2) provide, "[t]here may be other factual circumstances under which the Service will find the U.S. citizen parent to have legal custody for purposes of the CCA."

The Authorization indicates the applicant's father approved of appointing, as the applicant's guardian, the applicant's mother, who in turn accepted the guardianship. It also indicates the applicant would reside with his mother, who "commit[s] herself to his care as a true family mother, providing each and every one of the guarantees established in favor of the [applicant]."

Based on the foregoing, the record does not include evidence that "a court of law or other appropriate government entity" has awarded "primary care, control, and maintenance" of the

applicant to his mother; however, as indicated in the Authorization, the record reflects the applicant's mother has "actual, uncontested custody. Accordingly, we conclude the record is sufficient to establish that the applicant's mother has legal custody of the applicant.

We will now consider whether the record sufficiently demonstrates the applicant resided in the United States in the physical custody of his mother pursuant to his lawful admission for permanent residence. The statute does not require that the applicant establish that he has resided with his mother for any particular amount of time, only that he demonstrate that he was in his mother's legal and physical custody after her naturalization and prior to his eighteenth birthday.

The record reflects the applicant was admitted to the United States as a lawful permanent resident on August 23, 2011, and, as mentioned previously, the Authorization indicates the applicant would reside with his mother under her guardianship. The record also includes immigration applications and petitions filed with USCIS and U.S. Department of State as well as mailing envelopes, identifying the applicant's mailing address as his mother's and stepfather's address in the United States. Although the foregoing may demonstrate the applicant intended to live with his mother upon his admission to the United States in 2011, the record lacks independent evidence of the applicant's residence with his mother, such as school, medical, and tax records. Accordingly, we cannot conclude that the record contains sufficient documentation to establish, by a preponderance of the evidence, that the applicant has actually resided in his mother's physical custody pursuant to his lawful admission as a permanent resident while under the age of eighteen as is required under section 320(a)(3) of the Act.

Conclusion

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.