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**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF L-A-O-C-

DATE: NOV. 20, 2015

APPEAL OF SAN FRANCISCO FIELD OFFICE DECISION

APPLICATION: FORM N-600, APPLICATION FOR CERTIFICATE OF CITIZENSHIP

The Applicant, a native of Nicaragua, seeks a Certificate of Citizenship. *See* Immigration and Nationality Act (the Act) § 321, 8 U.S.C. § 1432 (Repealed by Sec. 103(a), title I, Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (2000)). The Field Office Director, San Francisco, California, denied the application. The matter is now before us on appeal. The appeal will be sustained.

The record reflects that the Applicant was born on [REDACTED], in Nicaragua to married, non-U.S. citizen parents. The Applicant's parents divorced on [REDACTED], 1972, and the divorce decree awarded legal custody of the Applicant to his mother. On January 8, 1973, the Applicant's mother issued a notarized sworn statement to confer custody of the Applicant and an older brother of the Applicant to the Applicant's father. The Applicant's father became a U.S. citizen upon naturalization on August 27, 1980, when the Applicant was [REDACTED] years old. The Applicant was admitted to United States as a lawful permanent resident on April 26, 1982, at the age of [REDACTED]. The Applicant seeks a certificate of citizenship indicating that he derived U.S. citizenship through his father.

The Director determined that the Applicant did not derive U.S. citizenship under former section 321 of the Act (the Act) because he did not establish that he was in the sole legal custody of his naturalized parent who was legally separated from the other parent prior to his eighteenth birthday. The Form N-600, Application for Certificate of Citizenship, was denied accordingly.

On appeal, the Applicant contends that the 1973 sworn and notarized custody agreement between his parents was sufficient to establish a full transfer of physical and legal custody his father, and therefore the Applicant derived U.S. citizenship from his father.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

Because the Applicant was born abroad, he is presumed to be a foreign national 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). Former section 321 of the Act, in effect at the time the Applicant became 18 years of age in 1989, is therefore applicable in this case.

Former section 321 of the Act provided, in pertinent part, that:

- (a) a child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:
 - (1) The naturalization of both parents; or
 - (2) The naturalization of the surviving parent if one of the parents is deceased; or
 - (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 said child is under the age of 18 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 (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

The record indicates that the Applicant obtained lawful permanent residency in 1982 at the time of his entry to the United States, and that his father naturalized in 1980. The Applicant has thus demonstrated that he fulfills the fourth and fifth conditions, as his father became a naturalized U.S. citizen prior to his 18th birthday, and he was admitted to the United States as a lawful permanent resident while under the age of 18. At issue in this case is whether the Applicant’s father had legal custody of the Applicant following his parent’s divorce and prior to his eighteenth birthday.

The Director found that the Applicant did not establish that his father had legal custody of him prior to his 18th birthday. The Director found that the sworn statement of the Applicant’s mother, dated January 8, 1973, was not sufficient to effect a full transfer of legal custody from his mother to his father, and that the translation of the Spanish phrase “la guarda” is comparable to granting a power of attorney to the father, as opposed to legal custody.

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Legal custody “refers to the responsibility for and authority over a child.” See 8 C.F.R. § 322.1 (defining “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, 41 (BIA 1970). The Applicants parents’ divorce judgment states that the custody of the Applicant corresponds to his mother.

However, the record includes the sworn statement before a notary public of the Republic of Nicaragua by the Applicant’s mother dated January 8, 1973. The Applicant submits a legal opinion from a licensed Nicaraguan attorney and notary public which states that the 1973 agreement was sufficient for a full transfer of legal custody to the Applicant’s father under Nicaraguan law.

The opinion of the Nicaraguan legal expert notes that when the parents of the Applicant divorced in 1972, the custody of the Applicant and his brother, who were under [REDACTED] years of age, was awarded to their mother. According to the Nicaraguan Civil Code, after a divorce by mutual consent, custody of children under the age of seven years remains with the mother. *Código Civil de la República de Nicaragua* (Nicaraguan Civil Code), February 1, 1904, art. 169; art. 260 § 2, art. 261. The Nicaraguan legal expert further notes that because the parents were in agreement regarding the 1973 transfer of custody, there was no conflict of interest, and therefore the two parties agreed to voluntary jurisdiction and did not need to go before a court for the agreement to be valid. This assertion is corroborated by the Nicaraguan Code of Civil Procedure, which indicates that if a person has custody of the children and voluntarily relinquishes it, no one can object other than the person to whom the custody has been relinquished and does to want the custody. See, *Código de Procedimiento Civil de la República de Nicaragua* (Nicaraguan Code of Civil Procedure), January 1, 1906, *Libro III* (Book Three), *Jurisdiccion Contenciosa* (Contentious Jurisdiction).

Moreover, the Nicaraguan legal expert states that a notary in Nicaragua is an authenticating officer that is properly authorized to execute a voluntary decision made by one parent on behalf of another in regard to the custody of children, and references the Nicaraguan Law of Notaries, Chapter 1, Articles 1-4. As noted by counsel for the Applicant, in Nicaragua, a “notary” is a public official who is certified by the Supreme Court Justice to perform legal acts such as custody decisions, rather than, as in the United States, a private individual who is authorized to authenticate documents.¹ Therefore, we find the Applicant has demonstrated that the notary on the 1973 agreement had sufficient legal authority to authenticate the agreement, and bind the parties involved.

¹ Nicaraguan Law of Notaries, Chapter 1, Article 2. These assertions are also supported by a law review article discussing the different connotations for the term “notary public” between the United States and countries in Latin America. According to the article, in civil law countries, “notary” “has a very different connotation than the term ‘notary public’ does in the United States.... Latin notaries, in contrast to American notaries public, are state-appointed, private legal professionals who, whenever asked, are required to: (1) carry out nonadvocacy counseling; (2) give private transactions proper legal form and authenticate such transactions in an enforceable public document; and (3) maintain a permanent record of these transactions, for which they must provide certified copies, if requested.... The education and admission requirements for becoming a Latin notary are far more stringent than those for admission to the bar in the United States.” Cisneros, *Notarius Notaries - How Arizona Is Curbing Notario Fraud in the Immigrant Community*, 32 *Ariz. St. L.J.* 287, 288, 294-95, 297 (2000).

In addition, the opinion of the Nicaraguan legal expert clarifies the use of the term “guarda” as it applies to the rights of parents over their children in Nicaraguan law. As explained by the legal expert, the expression “guarda” (custody) “is the combination of acts exercised by the parents for the benefit of their children, that is the whole of what they must be provided. It is the legal and physical custody.” The legal expert cites the Nicaraguan Civil Code, Chapter IV, Article 244, which holds that it is the responsibility of the parents to delegate who will protect and administer the affairs of their minor children, and the body of these rights constitutes custody. The legal expert further provides her translation of the notarized sworn statement of the Applicant’s mother, translating the term “guarda” to “custody.” The Applicant contends that the opinion expressed by the legal expert regarding the use of the term “guarda” as it pertains to custody of the Applicant is sufficient to establish that the Applicant’s mother granted custody to his father. As this definition encompasses the definition of legal custody stated above, and as we found the notary had sufficient authority to execute and validate the 1973 agreement, we find that the 1973 agreement was sufficient to accord legal custody of the Applicant to his father.

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). 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 E-M-*, 20 I&N Dec. 77, 79-80 (Comm’r 1989). In evaluating the evidence, *Matter of E-M-* also stated that “[t]ruth is to be determined not by the quantity of evidence alone but by its quality.” *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, U.S. Citizenship and Immigration Services must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. We note that when foreign law is required to establish eligibility for a benefit, the application of the foreign law is a question of fact which must be proved by the Applicant. *See, e.g., Matter of Kodwo*, 24 I&N Dec. 479 (BIA 2008). Here, the Applicant has provided expert legal opinion, as well as certified English language translations of relevant sections of the Nicaraguan Code, in support of the issue involving foreign law.

In addition to demonstrating the legal sufficiency of the mother’s 1973 sworn statement before a notary public of the Republic of Nicaragua, the record includes additional corroborating evidence that the father exercised legal custody of the Applicant, including letters from family members and evidence of the financial support the Applicant’s father provided to him. Furthermore, while not dispositive in determining legal custody, the record shows that the Applicant entered the United States as a lawful permanent resident on April 26, 1982, based upon an immigrant visa petition filed by his father.

In this particular case, a preponderance of the evidence indicates that the Applicant’s parents were legally separated in 1972 in Nicaragua, and although the Applicant’s mother was initially granted custody of the Applicant, Nicaraguan law regarding custody and an expert opinion on a matter involving foreign law establish by a preponderance of the evidence that the Applicant’s father had

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legal custody of the Applicant prior to his 18th birthday. Accordingly, the Applicant has shown that he qualifies to derive citizenship under former section 321(a) 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.

Cite as *Matter of L-A-O-C-*, ID# 12965 (AAO Nov. 20, 2015)