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

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

MATTER OF J-C-R-F-

DATE: FEB. 26, 2016

APPEAL OF MIAMI FIELD OFFICE DECISION

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

The Applicant, a native of Colombia, seeks a Certificate of Citizenship. *See* Immigration and Nationality Act (the Act) § 320, 8 U.S.C. § 1431. The Field Office Director, Miami, Florida, 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 Colombia. The Applicant's parents were married at the time of his birth, but subsequently were divorced. The Applicant was admitted to the United States as a visitor on December 9, 2005. The Applicant was granted conditional permanent resident status on August 8, 2007, and obtained lawful permanent resident status in the United States on December 2, 2010, when he was [REDACTED] years old. The Applicant's mother became a U.S. citizen upon her naturalization on April 30, 2014, when the Applicant was [REDACTED] years old. The Applicant seeks a certificate of citizenship indicating that he derived 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).

On February 7, 2015, the Director issued a Request for Evidence (RFE) to the Applicant, requesting a copy of the divorce decree of his parents with a custody order, and proof that the Applicant was in the physical and legal custody of his U.S. citizen mother. As the Director did not receive a response to the RFE within the required 12 week period, in a decision dated May 29, 2015, the Director determined that the Applicant did not establish eligibility pursuant to section 320 of the Act, 8 U.S.C. § 1431. The Form N-600, Application for Certificate of Citizenship, was denied accordingly.

On appeal, the Applicant states he was unable to obtain a copy of his parents' divorce certificate within the allotted 12-week period. He was subsequently able to obtain a copy of the divorce decree showing custody, which was submitted on appeal, along with evidence of his mother's custody over him in the United States.

We conduct appellate review on a *de novo* basis. The entire record was reviewed and considered in rendering this decision.

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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). Section 320 of the Act, 8 U.S.C. § 1431, as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (CCA), applies to this case because the Applicant was not yet 18 years old as of the February 27, 2001, effective date of the CCA. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 156 (BIA 2001) (en banc).

Section 320(a) of the Act, 8 U.S.C. § 1431(a), provides:

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 establishes that his mother became a naturalized U.S. citizen on April 30, 2014, when the Applicant was [redacted] years of age. The record further shows that the Applicant is residing in the United States pursuant to a lawful admission for permanent residence, which was granted on December 2, 2010, when the Applicant was [redacted] years of age. Therefore, the Applicant has met the requirements in sections 320(a)(1) and (a)(2) of the Act, and a portion of section 320(a)(3) of the Act.

We find the Applicant has provided sufficient evidence to indicate that he fulfills the remainder of the requirements in section 320(a)(3) of the Act as well. Legal custody vests “[b]y virtue of either a natural right or a court decree.” *Matter of Harris*, 15 I&N Dec. 39 (BIA 1970). In this case, the Applicant presented on appeal a copy of the divorce certificate between his parents, dated [redacted] 2000, in [redacted] Colombia. The divorce decree states that the physical custody of the Applicant was given to the mother, that custody was given to both parents, and that the Applicant was able to leave Colombia with written authorization from both parents. Thus, the record reflects that the Applicant’s mother, along with his father, had legal custody over the Applicant.

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Furthermore, evidence submitted on appeal shows that the Applicant was residing in his mother's physical custody in the United States. The record includes a copy of the 2010 federal income tax return of the Applicant's step-father, claiming the Applicant's mother and the Applicant as his dependents. The Applicant further submitted copies of a statement from the Department of Children & Families, a copy of a rental agreement, and a copy of an automobile insurance statement, which all indicate that the Applicant is living at the same residence as his mother, demonstrating her physical custody of the Applicant.

As such, the Applicant has established that he derived U.S. citizenship through his mother in accordance with 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.

Cite as *Matter of J-C-R-F-*, ID# 15325 (AAO Feb. 26, 2016)