



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

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

In Re: 21036001

Date: APR. 22, 2022

Motion on Administrative Appeals Office Decision

Form N-600, Application for Certificate of Citizenship

The Applicant, a native and citizen of the Dominican Republic, seeks a Certificate of Citizenship to reflect that he derived U.S. citizenship from his father under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432, *repealed by* Sec. 103(a), title I, Child Citizenship Act of 2000, Pub.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 Director of the New York, New York District Office denied the application, concluding that the Applicant was not eligible for a Certificate of Citizenship under former section 321(a) of the Act because his parents' divorce decree showed his non-U.S. citizen mother was awarded legal custody when the parents divorced in 1984, and the Applicant provided insufficient evidence to establish that the custody award was legally modified, or that he resided in his U.S. citizen father's legal custody prior to turning 18, as required by former section 321(a)(3) of the Act. *See* section 321(a)(3) of the Act (stating that a child born outside of the United States to foreign national parents becomes a citizen of the United States upon fulfillment of the following conditions: . . . "The naturalization of the parent having legal custody of the child when there has been a legal separation . . . and if . . . [s]uch naturalization takes place while such child is under the age of 18 years"); *see also Matter of M*, 3 I&N Dec. 850 (BIA 1950) (legal custody of a child resides with the parent who has been granted custody by court order or statutory grant). The Applicant filed a motion to reopen and motion to reconsider the Director's decision in 2012, and the Director dismissed the motions. The Director acknowledged newly provided Judicial Power evidence from a court in the Dominican Republic referencing an [redacted] 1990 document in which the Applicant's parents agreed, in front of an attorney/notary, to transfer custody over the Applicant to his father. However, the Director highlighted that the Judicial Power evidence did not legally authenticate or otherwise demonstrate that the 1990 notarial agreement modified or superseded the court's original 1984 legal custody award granting custody to the Applicant's mother. We subsequently dismissed his appeal and subsequent motion to reopen and reconsider, agreeing with the Director's determination, which we incorporate herein.

The matter is now before us on a second motion to reopen. A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). 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. *Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008). Upon review, we will dismiss the motion because the Applicant has not met that burden.

On motion to reopen, the Applicant submits an [] 2015 order from the court within the legal district [] in the Dominican Republic addressing the 1990 private agreement to transfer custody of the Applicant from his mother to his father. He claims that the new “court document dated [] 2015 confirm[s] that the [] 1990 document was a legal document for court purposes.” We disagree.

According to the [] 2015 court document, custody of the Applicant appears to be transferred as of the date of the [] 2015 court order. The document states “Fifth: In virtue of the above, [the Applicant’s mother], agrees to accept and accepts as follow; that *starting the date of this document*, the effects of the sentenced date [] 1998] issued by the civil and commercial chamber of the first circumscription of the first instance court of the National district in regarding to custody and care of the minor [the Applicant] contained in numeral three are ceased, *starting forward*, the custody and care of such minor, is responsibility of the father [].” (Emphasis added.) Thus, in 2015 the court reviewed the 1990 private custody agreement between the parents, and gave it force of law as of the date of the [] 2015 court order. Furthermore, the [] 2015 court document itself indicates that private agreements transferring custody, which were not done through a civil court, are not effective. Specifically, it states “The judge after studying the case . . . considering that article 326 of the civil code establishes: To resolve regarding the claims of personal status, the civil courts are the only competent.” Finally, the Applicant was 32 years old in [] 2015. As such, the [] 2015 court document transferring custody from the Applicant’s mother to his father, does not demonstrate that there was a legal transfer of custody to his father before he turned 18, as required under former section 321(a)(3) of the Act.

Accordingly, and in light of the above, the Applicant has not met his burden of satisfying the requirements under former section 321(a)(3).

ORDER: The motion to reopen is dismissed.