



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

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

In Re: 23193879

Date: NOV. 18, 2022

Motion on Administrative Appeals Office Decision

Form N-600, Application for a Certificate of Citizenship

The Applicant, who was born abroad in 1980 seeks a Certificate of Citizenship to reflect that he derived citizenship from his naturalized U.S. citizen father under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432.¹ Because the Applicant is claiming derivative citizenship solely through his naturalized U.S. citizen father, he must demonstrate in relevant part that his father had legal custody after the parents divorced, and before the Applicant's 18th birthday in 1998. Former section 321(a)(3) of the Act.

The Director of the New York, New York District Office denied the Form N-600 and dismissed a subsequent motion to reopen and reconsider, concluding that the Applicant did not establish as required that his father had legal custody because the court awarded legal custody to his mother when the parents divorced in 1984. In making this determination the Director considered a 1990 notarial agreement in which the Applicant's mother transferred custody to his father and a related Judicial Power document, but determined that this evidence was inadequate to show that the parents' private custody agreement superseded the judicial custody grant to the mother in the divorce decree. We dismissed the Applicant's appeal and a subsequent motion to reopen and reconsider on the same basis. We also dismissed the Applicant's second motion to reopen, concluding that the additional 2015 court document he provided was insufficient to establish his father's legal custody as of 1990.

The matter is now before us on a third combined motion to reopen and reconsider. Upon review, we will dismiss the motions.

I. LAW

As previously discussed, a motion to reopen is based on documentary evidence of new facts, and a motion to reconsider must establish that our prior decision was based on an incorrect application of the law or U.S. Citizenship and Immigration Services (USCIS) policy to the evidence in the record at the time of the initial decision. 8 C.F.R § 103.5(a)(2)-(3). We may grant a motion that satisfies these requirements and demonstrates eligibility for the benefit sought.

¹ Repealed by section 103(a), title I, Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (2000).

II. ANALYSIS

In our previous decision, which we incorporate here by reference we determined that the 2015 order from a court in the Dominican Republic approving the parents' 1990 out-of-court custody transfer agreement did not have retroactive effect, because it specifically provided that the agreement became legally effective on the date the order was issued in April 2015. As the Applicant was 32 years old at the time, we concluded that he did not meet the legal custody condition prior to his 18th birthday, as required to derive U.S. citizenship from his father under former section 321(a)(3) of the Act. The Applicant has not overcome this determination.

As an initial matter, the Applicant does not identify any specific legal or USCIS policy errors in our prior decision, nor does he claim that it was otherwise incorrect based on the evidence in the record at the time we issued that decision. Rather, he asserts generally that "the recent paperwork from the Dominican Republic" confirms that the 1990 agreement regarding his custody had the force of law since 1990, and not since 2015 when the court issued an order approving it. We have reviewed the additional documents the Applicant submits on motion, and conclude that they do not establish that the 2015 court order was retroactive, or that his father otherwise had legal custody before the Applicant turned 18 years old in 1998.

The supplemental evidence on motion consists of a March 2022 collective sworn statement before a notary public in the Dominican Republic, and a related power of attorney document. The sworn statement indicates that seven individuals of legal age, identified as Dominican private and public employees of various civil status jointly testified before a public notary attorney in [REDACTED] Dominican Republic that they were fully aware that the Applicant's parents were married in the Dominican Republic in 1980 and divorced there in 1984, and that the parents' 1990 agreement granted the custody of the Applicant to his father, "who proceeded to approve said agreement before [the court] through civil judgement dated [in April 2015], stating that this last decision replaced or replaces the effect of the guardianship that the mother had, transferring the same in favor of the father." The Applicant does not explain the basis for the individuals' opinion concerning the effect of the 2015 court order, or how their testimony alone shows that the transfer of custody to his father was retroactive. As such, the sworn statement is insufficient to support the Applicant's claim that his father had legal custody since 1990.

In addition, the accompanying power of attorney document, dated May 2022 states only that the first Civil, Commercial and Labor Chamber of the Court of First Instance of the Judicial District of [REDACTED] approved the March 2022 sworn statement, as requested by an individual acting on the Applicant's behalf. Thus, while the document indicates that the court found the sworn statement to have been properly executed, it does not include any findings on the substantive issue of the Applicant's custody, and the Applicant does not explain its relevance to the merits of his citizenship claim.

In conclusion, the supplemental documentation the Applicant submits on motion does not show that his parents' 1990 out-of-court custody agreement, which was not approved by the court until 2015, was retroactive, or that it otherwise constituted a legal custody grant to his father under Dominican law. The Applicant therefore has not established that we erred as a matter of law or USCIS policy in concluding that he did not meet the legal custody condition to derive U.S. citizenship from his father

under former section 321(a)(3) of the Act, or that there are new facts or evidence that would warrant reopening of these proceedings. Consequently, the Applicant's request for a Certificate of Citizenship will remain denied.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.