United States Department of State

Washington, D.C. 20520

SENSITIVE BUT UNCLASSIFIED
Attorney Client Privilege

MEMORANDUM

DATE: July 8, 2019

TO: FILE

FROM: CA/OCS/L – Carol Farrand

SUBJECT: Citizenship claim under former Section 321 of the INA

NAME: [redacted]
DPOB: [redacted] Colombia

Summary: In December 2006, Juan [redacted] (Juan) was removed from the United States by order of the Immigration Court in El Paso, Texas. In the removal proceedings, the Court determined that Juan did not acquire U.S. citizenship pursuant to former Immigration and Nationality Act (INA) Section 321, 8 USC § 1432, because his naturalized U.S. citizen mother did not have **sole** legal custody of Juan upon the dissolution of her marriage to Juan's alien father as required under by *Bustamante-Barrera v. Gonzales*, 447 F.3d 388 (5th Cir. 2006). Juan waived appeal.

Juan subsequently applied for a U.S. passport at U.S. Embassy Madrid on November 15, 2007. That application was denied February 15, 2008 on the ground that Juan had not submitted evidence of citizenship or naturalization. Six years later, on September 12, 2013, Juan again applied for a U.S. passport at U.S. Embassy Madrid, this time submitting supporting documentation, including his mother's Certificate of Naturalization. At that time, Juan informed the consular officer that he had been removed from the United States in 2006. Because of the removal, U.S. Embassy Madrid referred the case to OCS/L on March 12, 2014.

OCS/L requested additional documentation of Juan's claim, which he submitted to post in April 2015. Upon review, OCS/L concluded Juan acquired U.S. citizenship at age 12 under former Section 321 of the INA upon the divorce of his parents in Florida on April 26, 1988, because as a legal permanent resident, he thereafter resided in the United States in the legal custody of his mother, who naturalized as a U.S. citizen on January 20, 1987. In June 2015 the Department discussed the claim with USCIS, who consulted with Immigration and Customs Enforcement (ICE) attorneys to determine whether Juan's 2006 removal was improper. The result of the discussion was inconclusive as to whether DHS believed Juan acquired U.S. citizenship. OCS/L contacted USCIS again in October 2018. USCIS recommended another conference call to ensure ICE's agreement.

The Department is prepared to conclude that Juan acquired U.S. citizenship under former Section 321 at age 12 upon the divorce of his parents in Florida on April 26, 1988, because as a legal permanent resident, he thereafter resided in the United States in the legal and physical custody of his mother, who naturalized as a U.S. citizen on January 20, 1987. Although the Property Settlement Agreement attached to the Final Order of Dissolution provides for "shared parental responsibility" for the children (Juan and his sibling, [redacted]), which falls afoul of the sole legal custody requirement announced in *Bustamante-Barrera*, 1) the Department maintains that the legal custody requirement of former INA 321(a)(3) is satisfied even if the parents are awarded joint custody (See TABs 11 and 16); and 2) two DHS/USCIS Administrative Appeals Office (AAO) opinions (albeit one non-precedential)[1] have since concluded that *Bustamante-Barrera* does not apply in the 11th Circuit which is where the events giving rise to Juan's citizenship claim under INA 321 took place (specifically, Juan's mother's naturalization, the dissolution of the marriage of Juan's parents and Juan thereafter residing as a legal permanent resident with his mother in Florida after the dissolution of his parents' marriage on April 26, 1988 when he was 12 years old).[2]

Next Steps: With PPT/L and L/CA clearance, OCS/L will forward the analysis and AAO decisions cited to USCIS and then schedule a conference call with them, PPT/L and L/CA with an aim of reaching agreement that Juan acquired U.S. citizenship under former INA Section 321.

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[1] See TABs 13 and 14.

[2] The Immigration Judge applied 5th Circuit law likely because Texas, where the removal proceeding occurred, is in the 5th Circuit. However, as noted, the facts giving rise to Juan's citizenship claim took place in Florida, which is in the 11th Circuit. The 11th Circuit has not ruled on the meaning of "legal custody" for purposes of former INA 321(a)(3), 8 U.S. C. 1432(a)(3), but it hardly makes sense to evaluate a citizenship claim that arose in Florida under 5th Circuit law, and the AAO appears to agree (TABS 13 and 14).

Background: U.S. Embassy Madrid referred the citizenship claim of Juan [redacted] (Juan), a passport applicant who was removed from the United States in December 2006, to CA/OCS/L for review. The citizenship claim is under former INA§ 321.

According to the evidence presented, Juan's father, [redacted], and mother, [redacted], both born in Colombia, were married on May 27, 1972. (TAB 1)

Juan was born in Colombia on October 7, 1975. (TAB 2)

Juan was admitted to the United States as a lawful permanent resident on January 8, 1978. (TAB 3)

Juan's mother, [redacted], naturalized as a U.S. citizen on January 20, 1987. According to her Certificate of Naturalization [redacted] was residing in Hialeah, Florida (TAB 4)

Juan's parents legally divorced in Florida on April 26, 1988. (TAB 5) The Property Settlement Agreement attached to the Final Order of Dissolution provides for "shared parental responsibility" for the children (Juan and his sibling, Gustavo): "The parental responsibility for the minor children of the marriage of the parties herein shall be shared by both parents."[3] (TAB 5, p.3, paragraph 11 a))

Under the Property Settlement Agreement, Juan's mother was to assume the mortgage of the jointly owned condominium in Dade County, Florida, while Juan's father was to execute a quit claim deed. (TAB 5, p.2, paragraph 3) The Property Settlement Agreement also provides that "The primary physical residence of the minor children shall be with the Wife subject to the right and the responsibility of the Husband to have frequent and continuing contact with the minor children." (TAB 5, p.4, paragraph 12)

According to Juan's father, sometime between 1979 and 1981 he and his wife purchased a townhouse in the city of Hialeah, located at [redacted]. Miami, FL. (TAB 6) According to Juan, he lived at [redacted], Hialeah, Florida from 1984 to 1992, continuing to live there with his mother and brother

[3] Under **Florida Statute 61.046 (17)** "shared parental responsibility" means a court-ordered relationship in which both parents retain full parental rights and responsibilities with respect to their child and in which both parents confer with each other so that major decisions affecting the welfare of the child will be determined jointly.

after his parents' divorce in 1988. (TAB 7) Juan's school records for grades 6 through 8 confirm that he lived at [redacted], Hialeah, Florida, and attended [redacted] also in Hialeah. (TABs 8 and 15) (Although the stamp "[redacted] School" is barely legible on the records, TAB 15, taken from the Internet, indicates that the number for [redacted] School is [redacted] and that is the same number listed after "Current School" on his school records.) Juan's Social Security Statement shows earnings for 1989 and 1992, when he was under the age of 18. (TAB 9)

Statutory Authority:

Former Section 321 of the INA, 8 USC § 1432, as in effect when Ms. [redacted] naturalized as a U.S. citizen and when Juan's parents divorced on April 26, 1988, provided:

"Children born outside of United States of alien parents; conditions for automatic citizenship

(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 such child is under the age of eighteen 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 (1) of this subsection, or the parent naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of eighteen years.

(b) Subsection (a) of this section shall apply to an adopted child only if the child is residing in the United States at the time of naturalization of such adoptive parent or parents, in the custody of his adoptive parent or parents, pursuant to a lawful admission for permanent residence."

Section 101(c)(1) of the INA, 8 USC § 1101(c)(1) provides in pertinent part that "The term 'child' means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere ..."

Under **Florida Statute 61.046 (17)** "shared parental responsibility" means a court-ordered relationship in which both parents retain full parental rights and responsibilities with respect to their child and in which both parents confer with each other so that major decisions affecting the welfare of the child will be determined jointly.

Case Law and Administrative Opinions:

Bustamante-Barrera v. Gonzales, 447 F.3d 388 (5th Cir. 2006)

Javier Bustamante-Barrera was born in wedlock in Mexico in 1979 to Mexican national parents. He and his parents became legal permanent residents in 1983 and resided in the United States. His parents divorced in California in 1991. The divorce decree awarded sole physical custody to the mother but provided for joint legal custody under which the father had visitation rights. Javier's mother naturalized in 1994 when Javier was 15. The father never naturalized.

In August 2002, DHS instituted removal proceedings against Javier based on convictions in Texas for assault causing bodily injury to a family member and aggravated assault with a deadly weapon. Javier argued the Immigration Court lacked jurisdiction to order his removal because he acquired U.S. citizenship automatically under former INA 321 when his mother naturalized in 1994.

Thereafter, Javier's mother obtained a *nunc pro tunc* amended divorce decree purporting to award the mother sole legal custody effective February 4, 1991. Javier's attorney stated in an affidavit that the purpose of obtaining the amended decree was "to satisfy requirements of the Department of Immigration and Naturalization..." The Immigration Judge (IJ) concluded Javier acquired U.S. citizenship based on the amended decree and terminated removal proceedings. DHA appealed to the Board of Immigration Appeals (BIA). The BIA reversed and remanded in October 2003, stating that where both parents are living, the naturalizing parent needs sole legal custody before the child can acquire under former section 321 of the INA. The BIA also refused to give retroactive effect to

the amended divorce decree with respect to removal proceedings. On remand, the IJ ordered removal. Javier appealed. In March 2005, the BIA rejected his appeal. Javier filed a Petition for Review in the U.S. Court of Appeals, Fifth Circuit.

The Court framed the issue as "whether, before he reached the age of 18, his parents' joint custody regime satisfied [8 USC] § 1432(a)(3)'s [INA 321(a)(3)'s] requirement that 'the' naturalized parent be 'the' parent having legal custody." ***Bustamante-Barrera,*** 447 F.3d 388, 395. The Court concluded the case was one of federal statutory interpretation requiring the Court to construe one of the express conditions of § 1432(a)(3) and determine whether the words "the parent having legal custody", means the naturalized parent must have had *sole* as opposed to *joint* legal custody. *Id.* The Court, noting that the issue appeared to be one of first impression in all of the federal circuits, held that "only sole legal custody satisfies § 1432(a)(3)." *Id.* at 396.

The bases for the Court's decision included:

1) that Congress easily could have chosen to (but did not) add the words "or parents" to § 1432(a)(3) (so it would read "the parent *or parents* having legal custody") as it did in 8 U.S.C. § 1101(b)(1)(C)[4], 8 U.S.C. § 1101 (b)(1)(E)(i)[5] and 8 U.S.C. 1101(c)(1)[6](text in footnotes below, emphasis added). *Id.* at 396-397;

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[4] **8 U.S.C. § 1101 (b)** As used in subchapters I and II--
(1) The term "child" means an unmarried person under twenty-one years of age who is--
((A) ***
(B) ***
(C) a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in or outside the United States, if such legitimation takes place before the child reaches the age of eighteen years and the child **is in the legal custody of the legitimating parent or parents** at the time of such legitimation;

[5] **8 U.S.C. § 1101 (b)** As used in subchapters I and II--
(1) The term "child" means an unmarried person under twenty-one years of age who is—
(A) ***
(B) ***
(C) ***
(D) ***
(E)(i) a child adopted while under the age of sixteen years if **the child has been in the legal custody of, and has resided with, the adopting parent or parents** for at least two years or if the child has been battered or subject to extreme cruelty by the adopting parent or by a family member of the adopting parent residing in the same household: Provided, …

[6] **8 U.S.C. § 1101 (c)** As used in subchapter III--
(1) The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere, and, except as otherwise provided in sections 1431 and 1432 of this title, a child

2) Congress enacted § 1432(a) "to ensure that only those alien children whose 'real interests; were located in America with their custodial parent [singular], and not abroad, should be automatically naturalized." *Id.* at 397, citing *Nehme v INS*, 252 F.3d 415, 425 (5th Cir. 2001) and legislative history (cites omitted);

3) The "provision was adopted 'to promote marital and family harmony and ... prevent the child from being separated from and alien parent who has a legal right to custody.' ... Congress meant for § 1432(a) to protect the rights of *both* parents for as long as each of them has legal rights over the child." *Id.* at 397, citing *Nehme v INS*, 252 F.3d 415, 425 (5th Cir. 2001); and

4) "... interpreting § 1432(a)(3) as amenable to being satisfied by a decree of joint legal custody would lead to an absurd result: (1) not recognizing derivative citizenship when an alien child's parents are married and only one parent is naturalized, while (2) recognizing derivative citizenship when an alien child's parents are legally separated, continue to share legal custody (and thus legal rights) over the child, and only one parent is naturalized. Inasmuch as, in each example, both parents share rights over the child, we can conceive of no non-absurd reason ...why Congress would grant derivative citizenship to the child of the legally separated parents but not to the child of the married parents." *Id.* at 398.

U.S. v. Casasola 670 F.3d 1023 (9th Cir. 2012)

This 9th Circuit case affirmed the decision in ***Bustamante-Barrera,*** 447 F.3d 388 (5th Cir. 2006) that acquisition under 8 U.S.C. § 1432(a) upon the naturalization of a parent with legal custody applies only when the naturalizing parent has sole legal custody. In this case, Gustavo Adolfo Suchite Casasola was born in wedlock in 1983 to Guatemalan parents. The family emigrated to the United States in 1985 and 1986. The father naturalized in 1997 when Gustavo was 14 years old. Gustavo turned 18 on February 2, 2001. The mother, still married to

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adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of 16 years (except to the extent that the child is described in subparagraph (E)(ii) or (F)(ii) of subsection (b)(1)), **and the child is in the legal custody of the legitimating or adopting parent or parents** at the time of such legitimation or adoption.

the father, had not naturalized before that date as required by 8 U.S.C. § 1432(a)(1). The Child Citizenship Act of 2000 (which provides for automatic acquisition upon the naturalization of one parent, even if still married to a non-naturalized parent) entered into effect 25 days after Gustavo Adolfo Suchite Casasola turned 18.

Fierro v. Reno 217 F.3d 1, 3-4 (1st Cir. 2000)

Miguel Noel Fierro was born in wedlock in Cuba on October 25, 1962. He and his parents were admitted to the United States as refugees in 1970. On October 19, 1973, Miguel's parents were divorced pursuant to a decree from a Massachusetts probate court, which awarded Miguel's mother custody of him and his sister. On March 25, 1976, when he was 13 years old, Miguel became a lawful permanent resident. On March 21, 1978, when Miguel was 15 years old, his father naturalized.

On February 15, 1996, Miguel was convicted in Massachusetts of larceny and sentenced to four years in prison. In removal proceedings, he argued he acquired U.S. citizenship when his father was naturalized in 1978. On January 5, 1998, the immigration judge rejected Miguel's citizenship claim because his mother had been awarded legal custody of him in 1973 and had never become a naturalized citizen. The judge ordered Miguel removed to Cuba. Miguel then appealed to the Board and submitted an amended custody judgment secured from the Massachusetts probate court dated May 18, 1998, four months after the immigration judge's removal order. Although Miguel was now 35 years old, this decree purported to award custody to Miguel's father "*nunc pro tunc* to September 1, 1977."

On March 29, 1999, the Board issued a decision holding that Miguel should be given an opportunity to pursue a different avenue to avoid removal but it dismissed Miguel's claim of citizenship, concluding that the state court's 1998 modification of the custody decree had no effect on Miguel's citizenship status.

The Circuit Court agreed and denied Miguel's petitions.

This case is relevant primarily because of its discussion of the meaning of legal custody: "What is meant by the phrase 'having legal custody of the child' [as used in 8 U.S.C. 1432] is, of course, a question of federal statutory interpretation. But the Immigration and Naturalization Act provides no definition nor does the

legislative history illuminate the concept. *See* H.R.Rep. No. 82–1365 (1952), *reprinted in* 1952 U.S.C.C.A.N. 1653, 1740. Legal relationships between parents and children are typically governed by state law, there being 'no federal law of domestic relations.' *De Sylva v. Ballentine,* 351 U.S. 570, 580 ...; *see also Ex parte Burrus,* 136 U.S. 586, 593–94... (1890). Accordingly, subject to possible limitations, we think that the requirement of 'legal custody' in section 1432 should be taken presumptively to mean legal custody under the law of the state in question. Although there is no decision directly on point, this view is consistent with the approach taken in other cases in which a federal statute depends upon relations that are primarily governed by state law. *E.g., De Sylva,* 351 U.S. at 580..."

IN RE: Applicant, June 3, 2014 AAO Decision, Hialeah, FL

The applicant was born in wedlock in Cuba on May 10, 1975. He was admitted as a lawful permanent resident on May 11, 1980, when he was five years old. The applicant's parents divorced on May 24, 1983, when the applicant was eight years old. The applicant's father naturalized on February 20, 1990, when the applicant was 14 years old. The mother had not naturalized.

The divorce decree reflects that the Family Division of the Circuit Court of the 11th Judicial Circuit in and for Dade County, Florida ordered that: both parents share parental responsibility over the applicant, pursuant to Florida Statute 61.13(2)(b); and that the applicant's "primary residence home" would be with his mother.

The director determined that the applicant was ineligible for derivative citizenship under former section 321 of the Act, because he failed to establish that he was in his father's legal custody after his parents divorced, and prior to his 18th birthday. The application was denied. On appeal, the applicant argued that he lived with his father after his parents divorced and prior to his 18th birthday, and that he therefore satisfied the legal custody requirements contained in former section 321 of the Act.

The AAO concluded that the award of shared legal custody satisfied the statutory terms under former section 321(a)(3) of the Act, in that the language contained in former section 321(a)(3) of the Act refers to "the naturalization of the parent having legal custody of the child when there has been a legal separation of the parents."

In footnote 1, the AAO stated, "Outside of the Fifth and Ninth Circuit Courts of Appeal, former section 321(a)(3) of the Act does not require 'sole' legal custody over the child subsequent to a legal separation." *See* *Fierro v. Reno*, 217 F.3d 1, 4 (1st Cir. 2000) .

The applicant therefore meets the requirements set forth in former section 321(a)(3) of the Act." The AAO found that the applicant established all conditions for derivative U.S. citizenship pursuant to former section 321 of the Act were met.

Matter of C-P-H, April 25, 2018 Non-Precedential AAO Decision
APPEAL OF TAMPA, FLORIDA FIELD OFFICE DECISION
APPLICATION: FORM N-600, APPLICATION FOR CERTIFICATE OF CITIZENSHIP

The applicant was born in wedlock to foreign national parents in Taiwan in 1979. He was admitted to the United States for permanent residence in 1982. His parents divorced in 1992 and his father naturalized in 1995 when the Applicant was 16 years old.

The Director of the Tampa, Florida Field Office denied the Form N-600, concluding that Applicant did not derive U.S. citizenship under former section 321 of the Act because there was no evidence that his mother naturalized prior to his 18th birthday, nor did the record show that his naturalized U.S. citizen father had legal custody over the Applicant after the parents divorced.

The divorce decree included the following order regarding custody:

"The Husband and Wife shall share parental responsibility for the minor child [the Applicant]."

The AAO concluded that "as the court granted shared parental responsibility, the Applicant's father had 'full parental rights and responsibilities' and. thus, legal custody over the Applicant under Florida law." The award of joint legal custody to the Applicant's father satisfied the legal custody condition in former section 321(a)(3).

The AAO further stated, "We recognize that the U.S. Fifth and Ninth Circuit Courts of Appeals held in *Bustamante-Barrera v. Gonzales*, 447 F.3d 388 (5th Cir. 2006), and *U.S. v. Casasola*, 670 F.3d 1023 (9th Cir. 2012) that a grant of 'joint' legal custody is insufficient to satisfy the legal custody requirement in former

section 321(a)(3) of the Act. However, outside of the Fifth and Ninth Circuit the naturalized parent is not required to have *sole* legal custody over a child subsequent to a legal separation in order to satisfy the custody condition in former section 321(a)(3) of the Act. *See e.g., Fierro v. Reno*, 217 F.3d 1, 4 (1st Cir. 2000) (providing that the requirement of legal custody in former section 321 of the Act "should be taken presumptively to mean legal custody under the law of the state in question.") Because the Applicant's derivative citizenship proceedings arise within the jurisdiction of the U.S. Court of Appeals for the Eleventh Circuit, *Bustamante-Barrera and Casasola* are not binding in his case. While the Eleventh Circuit has not interpreted the legal custody requirement under former section 321(a)(3) of the Act,[7] the plain language of that section does not indicate that the naturalized parent must have *sole* legal custody. Rather, a child will derive U.S. citizenship under that section upon 'the naturalization of the parent having legal custody of the child when there has been a legal separation of the parents.'" [followed by footnote 6 re Passport Bulletin 96-18, TAB 11, Department of State view that INA 321(a)(3) does not require sole or exclusive legal custody.]

Analysis:

Because Juan's father had not naturalized as a U.S. citizen and was still alive when Juan's mother naturalized, the conditions of former Section 321(a)(3), (a)(4), and (a)(5) of the INA, excerpted below, must have been fulfilled in order for Juan to acquire U.S. citizenship automatically.

> **"(a)** A child born outside of the United States of alien parents .... becomes a citizen of the United States upon fulfillment of the following conditions:
> (1) ****
> (2) ****
> **(3)** The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents ... ; and if
> **(4)** Such naturalization takes place while such child is under the age of eighteen 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 (1) of this subsection, or the parent naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of eighteen years.

[7] As of July 1, 2019, the drafter could not find an 11th Circuit opinion on the meaning of "legal custody" as used in former Section 321 of the INA, 8 U.S.C. 1432.

Satisfaction of former Section 321(a)(3). Juan's mother, [redacted], naturalized as a U.S. citizen on January 20, 1987 in Hialeah, Florida. (TAB 4) She and her husband (Juan's father), [redacted], divorced on April 26, 1988 in Dade County, Florida. (TAB 5) The Property Settlement Agreement attached to the Final Order of Dissolution provides for "shared parental responsibility" for the children (Juan and his sibling, Gustavo): "The parental responsibility for the minor children of the marriage of the parties herein shall be shared by both parents."[8] (TAB 5, p.3, paragraph 11 a)) Thus, as the AAO found in ***IN RE: Applicant***, June 3, 2014 AAO Decision, Hialeah, FL, (TAB 13) and ***Matter of C-P-H***, April 25, 2018 Non-Precedential AAO Decision (TAB 14), the first alternative in former Section 321(a)(3) was satisfied – "the naturalization of the parent having legal custody of the child when there has been a legal separation of the parents."

Satisfaction of former Section 321(a)(4). Juan's mother, [redacted], naturalized as a U.S. citizen on January 20, 1987 when he was 11 years of age, well under the "age of eighteen" limit specified by (a)(4). (TABs 2 and 4)

Satisfaction of former Section 321(a)(5). Juan was admitted to the United States as a legal permanent resident on January 8, 1978 when he was two years old and thereafter began to reside permanently in the United States (TABs 2, 3, and 6), thus fulfilling the conditions of former Section 321(a)(5).[9]

Conclusion:

For the foregoing reasons, the Department is prepared to conclude that Juan [redacted] acquired U.S. citizenship automatically under INA Section 321, 8 USC § 1432 on April 26, 1988.

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[8] Under **Florida Statute 61.046 (17)** "shared parental responsibility" means a court-ordered relationship in which both parents retain full parental rights and responsibilities with respect to their child and in which both parents confer with each other so that major decisions affecting the welfare of the child will be determined jointly.

[9]The Department of State and the Department of Homeland Security agreed as early as 1996 that as long as all conditions of former INA Section 321(a) are fulfilled, the order in which fulfillment occurred is immaterial. See Passport Bulletin 96-18, (TAB 11) and 8 FAM 301.9-9 (C) (TAB 12). In considering the statutory language in (a)(5), both agencies generally interpret "to reside permanently" as meaning to reside permanently while in LPR status.

Attachments:

TAB 1 – Certificate of Marriage of [redacted] and [redacted] in New Jersey on May 27, 1972

TAB 2 – Birth Record of Juan [redacted] with translation listing date and place of birth as [redacted], Colombia, and listing the name of the father: [redacted], and of the mother: [redacted], both parents listed as Colombian nationals

TAB 3 – Permanent Resident Card for Juan [redacted], A# [redacted], Resident Since: 01/08/1978

TAB 4 – Certificate of Naturalization for [redacted], A[redacted], date and place of naturalization: January 20, 1987, U.S. District Court for the Southern District of Florida, Miami, Florida; residing at Hialeah, Florida

TAB 5 – Final Judgment of April 26, 1988, dissolving the bonds of marriage between [redacted] and [redacted] and Property Settlement Agreement

TAB 6 – Affidavit of [redacted] with timeline

TAB 7 – Affidavit of Juan [redacted]

TAB 8 – [redacted] Hialeah, Florida, school records for Juan [redacted], grades 6-8; entered 09/01/87 at 11 years of age and last withdrew 06/21/90 at 14 years of age

TAB 9 – Social Security Statement for Juan [redacted]

TAB 10 – Photograph of [redacted], Hialeah, Florida

TAB 11 - Passport Bulletin 96-18

TAB 12 – 8 FAM 301.9-9 (C)

TAB 13 – IN RE: Applicant, June 3, 2014 AAO Decision

TAB 14 – Matter of C-P-H, April 25, 2018 Non-Precedential AAO Decision

TAB 15 – Miami-Dade County Public Schools numerical codes listing [redacted] as LOC [redacted]

TAB 16 – Passport Memo December 2013

Drafted: CA/OCS/L: CFarrand x56257 July 1, 2019

Cleared:	CA/OCS/L:CFerber	(OK)
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