



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

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

In Re: 22002145

Date: SEP. 1, 2022

Appeal of New York, New York Field Office Decision

Form N-600, Application for Certificate of Citizenship

The Applicant, who was born abroad, seeks a Certificate of Citizenship to reflect that she acquired U.S. citizenship from her naturalized U.S. citizen mother pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431. Section 320 of the Act, *as amended* by the Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), and in effect since February 27, 2001, provides that a child who is under the age of 18 years and has at least one U.S. citizen parent will automatically derive citizenship if the child is residing in the United States in that parent's legal and physical custody pursuant to a lawful admission for permanent residence. The Director of the New York, New York Field Office denied the Form N-600, Application for Certificate of Citizenship, concluding that the Applicant had not submitted evidence sufficient to establish that she resided in the United States in the physical and legal custody of the U.S. citizen mother, as required.

On appeal, the Applicant submits a statement and evidence and asserts she has established that she is residing in the United States in the legal and physical custody of her U.S. citizen mother. We review the questions in this matter *de novo*. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Applicant is seeking a Certificate of Citizenship on the basis that she derived U.S. citizenship from the U.S. citizen mother. The Applicant was born in the Dominican Republic in [] 2007 to unmarried Dominican Republic citizen parents. The Applicant's birth certificate indicates that both her mother and father were single at the time of her birth. Although the record does not include her parents' marriage certificate, it contains their divorce certificate indicating that her parents married sometime after her birth. The Applicant was admitted to the United States as a lawful permanent resident (LPR) in October 2010. The Applicant's parents divorced in [] 2016, and the Applicant's mother subsequently became a U.S. citizen through naturalization in June 2018. There is no evidence that the Applicant's father is a U.S. citizen.

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). In the present matter, the last critical event is the naturalization of the Applicant's mother in

June 2018. Accordingly, section 320 of the Act, as amended by the CCA and in effect since 2001, applies to the Applicant's case.

Section 320 of the Act provides, in pertinent part:

(a) 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.

(b) Subsection (a) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(B)(1).

See also 8 C.F.R. § 320.2(a).

Because the Applicant was born abroad, she is presumed to be a foreign national and bears the burden of establishing her 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 the 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)).

II. ANALYSIS

The Applicant has established that she meets several of the conditions for derivative citizenship under section 320(a) of the Act. Her birth certificate from the Dominican Republic demonstrating that she was born in [] 2007, her mother's Certificate of Naturalization reflecting that she became a U.S. citizen in June 2018, and her LPR card collectively show that: she was born outside of the United States, she was admitted to the United States as a LPR in 2010, she has resided in the United States since at least 2007, and she has a naturalized U.S. citizen parent. Therefore, she has demonstrated that she was born outside of the United States, has a U.S. citizen parent, and is residing in the United States pursuant to a lawful admission for permanent residence while under the age of 18, consistent with the requirements of sections 320(a)(1), (2), and (3) of the Act.

However, as stated, the record includes a copy of the Applicant's parents' divorce certificate, indicating they were divorced in the Dominican Republic in [] 2016 when the Applicant was eight years old. Therefore, the Applicant, who is 15 years of age, must also establish that she was or is

residing in the legal and physical custody of her naturalized U.S. citizen mother on or after the Applicant's 2010 admission as a LPR and her mother's naturalization in June 2018, in order to show that she automatically acquired U.S. citizenship. *See* Section 320(a)(3) of the Act (requiring applicants to establish that they are residing in the United States in the legal and physical custody of the *U.S. citizen parent* pursuant to a lawful admission for permanent residence); 8 C.F.R. § 320.2(a)(3) (same). Here, as stated, the Director determined that the Applicant did not submit evidence to establish that she satisfied this requirement.

A. Physical Custody under Section 320 of the Act

Neither the Act nor the regulations define the term "physical custody." However, U.S. federal courts, including the U.S. Court of Appeals for the Second Circuit in whose jurisdiction these proceedings arose, and the Board of Immigration Appeals have considered physical custody in the context of "actual uncontested custody" in derivative citizenship proceedings and interpreted it to mean actual residence with the parent. *See Khalid v. Sessions*, 904 F.3d 129 (2d Cir. 2018) (finding that physical custody was established despite a "brief, temporary separation" from the naturalized parent - due to pretrial juvenile detention - because it was uncontested that the child lived with his naturalized citizen parent prior to his pretrial detention); *see also Bagot v. Ashcroft* 398 F.3d 252, 267 (3d Cir. 2005) (finding that a child was in the parent's "actual physical custody" where the child lived with the parent and no one disputed the parent's custody); *see also Matter of M-*, 3 I&N Dec. 850, (BIA 1950) (holding that the parent had "actual uncontested custody" of a child where the parent lived with the child, took care of the child, and the other parent consented to this arrangement). Here, the Applicant, who was admitted as a LPR in 2010, must establish she resided in the United States in her mother's physical custody at some point after her mother became a naturalized U.S. citizen in June 2018, while the Applicant was still under 18 years of age.

On the Form N-600, the Applicant claimed that she and her mother were residing at an address in the [redacted] New York at the time of the application in December 2019. The Applicant's initial evidence included a November 2019 utility bill and a December 2019 rent statement addressed to her mother at this [redacted] address, her mother's 2018 federal U.S. income tax return prepared by a tax preparer and signed by her mother in January 2019 listing this address as her residence, her mother's Certificate of Naturalization dated June 1, 2018, and her parents' divorce certificate. Although this demonstrated that the Applicant's mother resided at the [redacted] address, the Director found it was insufficient to show, by a preponderance of the evidence, that the Applicant resided with her mother there. The Director issued a request for evidence (RFE) asking that the Applicant submit additional documentation to establish where her mother resided and where she resided from June 1, 2018 to the present. However, as the Applicant did not respond, the Director ultimately denied the Form N-600.

On appeal, the Applicant submits a 2020 New York City public assistance budget letter addressed to her mother at the [redacted] New York address identifying the Applicant as a household member, another

copy of her mother's Certificate of Naturalization, and a letter.¹ Upon *de novo* review, the Applicant has submitted evidence that, collectively, is sufficient to demonstrate, by a preponderance of the evidence, that she was residing in the United States in the U.S. citizen parent's physical custody through actual residence with her mother at some point after her mother's naturalization in June 2018. Although the rent receipt and utility bill do not show that the Applicant was residing with her mother in November and December 2019, they do establish that her mother resided at the [redacted] address reflected on these documents at those times. The 2020 public assistance budget letter, addressed to her mother at the [redacted] address, identifies the Petitioner as a member of the household after her mother's June 2018 naturalization. Accordingly, these documents sufficiently reflect that the Applicant resided in the physical custody of her U.S. citizen mother at the [redacted] address at some point in 2020, while the Applicant was still under the age of 18. She therefore has shown on appeal that she satisfies the physical custody condition of section 320(a)(3) of the Act.

B. Legal Custody under Section 320 of the Act

The regulations provide that legal custody "refers to the responsibility for and authority over a child." 8 C.F.R. § 320.1. Under the same regulation, legal custody is presumed "[i]n the case of a child of divorced or legally separated parents . . . where there has been an award of primary care, control, and maintenance of a minor child to a parent by a court of law or other appropriate government entity pursuant to the laws of the state or country of residence." Additionally, 8 C.F.R. § 320.1 provides that U.S. Citizenship and Immigration Services considers "the U.S. citizen parent who has been awarded 'joint custody' to have legal custody of the child." In this case, the Applicant has the burden of establishing that her U.S. citizen mother was granted legal custody of her pursuant to the laws of the state or country of residence. *See* 8 C.F.R. § 320.3(b)(vi) (requiring applicants to provide documentation of legal custody where their parents are divorced).

The Applicant initially listed the same residential address for her mother and herself and included a fully translated copy of her parents' divorce certificate with her Form N-600. According to the divorce certificate, issued in the Dominican Republic, her parents' marital status was terminated effective [redacted] 2016. In the aforementioned RFE, the Director asked that the Applicant provide evidence, such as the full, final divorce judgement, along with all child custody orders, agreements, Findings of Fact and Conclusions of Law, and Mutual Consent Agreements, or other relevant documentation, demonstrating that she resided in the legal custody of her mother from June 2018 to the present. As noted above, the Applicant did not respond to this RFE, and she does not submit such evidence on appeal. She therefore has not shown that she satisfies the legal custody requirement of section 320(a)(3) of the Act.

¹ The Applicant also claims on appeal that she did not receive the Director's RFE. We note, however, that the RFE was sent to the Applicant's address of record, which remains her current address, and the record does not show, for example that the RFE was returned as undeliverable.

III. CONCLUSION

The Applicant has not met her burden of proof to establish that she derived U.S. citizenship from her mother. She is therefore ineligible for issuance of a Certificate of Citizenship, and her application remains denied.

ORDER: The appeal is dismissed.