



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

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

In Re: 20617703

Date: APR. 19, 2022

Appeal of Cincinnati, Ohio Field Office Decision

Form N-600, Application for a Certificate of Citizenship

The Applicant seeks a Certificate of Citizenship to reflect that she derived U.S. citizenship from her adoptive father under section 320 of the Immigration and Nationality Act (the Act) § 320, 8 U.S.C. § 1431. The Director of the Cincinnati, Ohio Field Office denied the Form N-600, Applicant for a Certificate of Citizenship (Form N-600), concluding that the Applicant was not eligible to derive citizenship because she was over 18 years of age when she was granted lawful permanent resident status in the United States. The matter is now before us on appeal. On appeal, the Applicant does not contest that she was over 18 years old when she obtained lawful permanent resident status in the United States. She indicates, however, that the Director erred by applying incorrect statute, asserting that she qualifies for U.S. citizenship under former section 321 of the Act.

In these proceedings, it is the Applicant's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 103.2(b)(1); *Matter of Chawathe*, 29 I&N Dec. 369, 375 (AAO 2010). The Administrative Appeals Office reviews 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

A. Former section 321 of the Act

As previously noted, the Applicant asserts on appeal that she qualifies for derivative U.S. citizenship under former section 321 of the Act.

Specifically, former section 321 of the Act provided that:

- (a) A child born outside of the United States of [foreign national] parents, or of a [foreign national] 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 18 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 18 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.

B. Section 320 of the Act

The Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), repealed former section 321 of the Act and amended, in part former section 320 of the Act. The amendments to section 320 of the Act took effect on February 27, 2001, and apply to individuals who satisfy the requirements of section 320 of the Act, as in effect on that date. *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 157 (BIA 2001).

Section 320 of the Act, as amended in February 2001 and currently in effect provides that:

(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).

Generally, to derive U.S. citizenship a foreign-born child must satisfy certain statutory conditions before turning 18 years of age. A child's acquisition of citizenship on a derivative basis occurs by operation of law and not by adjudication. *Matter of Fuentes-Martinez*, 21 I&N Dec. 893, 896 (BIA 1997). Thus, a child who satisfies requisite conditions will derive U.S. citizenship automatically, even though the actual determination of derivative citizenship may occur long after the fact, in the context of a passport application or a claim to citizenship. *Id.*

II. ANALYSIS

The record reflects that the Applicant was born in Mexico in [] 1987. In September 1998, at the age of 10, she was adopted in Kansas by her U.S. citizen father. In August 2008, at the age of 20, she was granted lawful permanent resident status. The Applicant filed the instant Form N-600 indicating that she derived U.S. citizenship from her adoptive father.

We will first address the Applicant's assertion on appeal that she qualifies for derivative U.S. citizenship under former section 321 of the Act. As stated, to establish derivative U.S. citizenship under former section 321(a) of the Act, a child born abroad to foreign national parents must show that both parents *naturalized* as U.S. citizens before that child's 18th birthday, unless he or she meets the specific conditions in former section 321(a)(2) or (3) of the Act to derive citizenship from only one *naturalized* parent. Former section 321(b) extends these provisions to adopted children who were residing in the United States as lawful permanent residents at the time of *naturalization* of the adoptive parent or parents, while under 18 years of age and in the custody of the adoptive parent or parents. Thus, a child, whether biological or adopted may derive U.S. citizenship under former section 321 of the Act, only if his or her parent(s) *naturalize*.

Naturalization is the process by which U.S. citizenship is granted to a foreign national after he or she fulfills specific requirements mandated by Congress and set forth in the Act. *See* section 316 of the Act (laying out the requirements for naturalization). However, in the present case, the record reflects that the Applicant's adoptive father did not naturalize; rather, the Applicant's Form N-600 indicates that her adoptive father was born in the United States and accordingly acquired U.S. citizenship through the same. *See* section 301(a) of the Act, 8 U.S.C. § 1401 (providing that a person born in the United States and subject to the jurisdiction thereof is a national and citizen of the United States at birth). The Applicant is therefore ineligible to derive U.S. citizenship from her adoptive father under former section 321(b) of the Act, which specifically requires "naturalization of . . . adoptive parent or parents." As she does not meet the threshold requirement of having at least one naturalized U.S. citizen parent from whom she can derive U.S. citizenship under former section 321 of the Act, we need not address whether she satisfies the remaining conditions for derivative citizenship in that section.

We will now address section 320 of the Act, which we find the Director correctly applied to this matter. Section 320 of the Act requires that all derivative citizenship conditions, including residence in the United States pursuant to a lawful admission for permanent residence, must be fulfilled before the

individual's 18th birthday and does not provide for any exceptions. In the instant matter, the record shows that the Applicant obtained lawful permanent resident status in August 2008, when she was over 18 years old. Consequently, the Applicant is not eligible to derive U.S. citizenship on that basis alone and we must dismiss her appeal.

In conclusion, the Applicant has not demonstrated that she satisfied the age requirement under section 320 of the Act, as she did not begin residing in the United States as a lawful permanent resident until she was over the age of 18. She is therefore ineligible for a Certificate of Citizenship and her Form N-600 remains denied.

ORDER: The appeal is dismissed.