U.S. Citizenship and Immigration Services

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

In Re: 21166831

Date: APR. 27, 2022

Appeal of Philadelphia, Pennsylvania Field Office Decision

Form N-600, Application for Certificate of Citizenship

The Applicant seeks a Certificate of Citizenship to reflect that she derived U.S. citizenship from her father under section 320 of the Immigration and Nationality Act (the Act) § 320, 8 U.S.C. § 1431. Section 320 of the Act, as amended by the Child Citizenship Act of 2000 (the 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. Section 320(a) of the Act.

The Director of the Philadelphia, Pennsylvania Field Office denied the Form N-600, concluding that the Applicant was not eligible to derive citizenship because she had not demonstrated that she was residing in the physical custody of her U.S. citizen father. On appeal, the Applicant asserts that she resides in the legal and physical custody of her father and offers additional evidence in support of this contention.

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 remand the matter to the Director for the entry of a new decision consistent with the following analysis.

## I. LAW

The Applicant is seeking a certificate of citizenship indicating that she derived U.S. citizenship from her U.S. citizen father. The Applicant was born in [redacted] 2006 in Nigeria to unmarried foreign national parents who never married. The Applicant's father became a naturalized citizen in June 2018 and she was admitted to the U.S. as a lawful permanent resident in December 2019.

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 this case, the Applicant was born in 2006, after the enactment of the CCA. Accordingly, section 320 of the Act, as amended by the CCA, applies to this 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.

Section 101(c) of the Act provides in relevant part:

> (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 ... in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

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 is seeking a certificate of citizenship indicating that she derived U.S. citizenship from her father.[1] The Director concluded that the Applicant established that her father was a U.S. citizen and that she was under the age of 18, thus satisfying the first and second requirements of section 320 of the Act for derivative citizenship respectively. However, the Director denied the Form N-600, determining that the Applicant did not establish she was in the physical custody of her father. The Director noted specifically that on both the instant N-600, filed in March 2021, and on her I-485, Application to Register Permanent Residence or Adjust Status, filed in 2019, the Applicant stated that she and her siblings resided with her mother on [redacted] Avenue in [redacted] PA, while her father resided on [redacted] Street, also in [redacted]

On appeal, the Applicant contends that the Director erred in determining that she had not established that she resides in the legal and physical custody of her father. In support of this contention, the

[1] The record includes the Applicant's birth certificate showing the father's name is reflected as such on the birth certificate, and the mother and father registered her birth together. As such, the parent-child relationship has been established.

Applicant submits mortgage documents, utility bills, joint bank statements, school correspondence, mail addressed to her, and statements from her mother and father explaining that they share responsibility jointly for her.

Neither the Act nor the regulations define the term "physical custody." However, "physical custody" has been considered in the context of "actual uncontested custody" in derivative citizenship proceedings and interpreted to mean actual residence with the parent. *See Bagot v. Ashcroft*, 398 F.3d 252, 267 (3rd Cir. 2005) (father had actual physical custody of the child where the child lived with him and no one contested the father's custody); *Matter of M-*, 3 I&N Dec. 850, 856 (BIA 1950) (father had "actual uncontested custody" of a child where the father lived with the child, took care of the child, and the mother consented to his custody).

The Applicant supplements the record on appeal with documentation sufficient to establish, by a preponderance of the evidence, that she resided with her father beginning in March 2021, while she was under the age of 18 and admitted to the United States as a lawful permanent resident. The Applicant provides October 2021 statements from both of her parents explaining that the father purchased the [redacted] street residence in March 2021, and that the Applicant, her siblings, and her parents moved there at the end of March 2021. The Applicant submits a copy of a change of address form requesting mail be forwarded to the [redacted] Street address beginning in March 2021, a copy of a July 2021 document from [redacted] department of records to her father advising that a deed was recorded in the father's name at [redacted] Street in May 2021, and March and April 2021 mortgage statements addressed to her father for the [redacted] street property. With her appeal, the Applicant also includes copies of her June and October 2021 bank account statements in her name and her father's name at the [redacted] street address. The record, as supplemented on appeal, also includes April 2021 correspondence from the Applicant's school to her parents at that address and September 2021 mailings addressed to her at the [redacted] street address.

As the Applicant has supplemented the record on appeal with evidence sufficient to establish that she lived with her father beginning in March 2021 through October 2021, she has shown that she satisfies the presumption that she "resides with the natural parent" pursuant to 8 C.F.R. § 320.1(3).

The Applicant has overcome the Director's sole ground for dismissal. We therefore will remand the matter for consideration of whether she has established that she resides in the legal custody of her father and whether she satisfies the requirements at section 101(c) of the Act.

**ORDER:** The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.