U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21581727

Date: APR. 28, 2022

Appeal of Hialeah, Florida 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 U.S. citizen father under former section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1430.

The Director of the Hialeah, Florida Field Office denied the application, concluding that the Applicant did not establish that she derived citizenship under section 320 of the Act because she was not residing in the United States in the legal and physical custody of her U.S. citizen father during the statutory period prior to her eighteenth birthday, as required.

The matter is now before us on appeal. The Applicant claims that the Director's decision was erroneous and submits additional evidence.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Applicant seeks a Certificate of Citizenship indicating that she derived U.S. citizenship from her father. The Applicant was born in Cuba in [redacted] 2003, to married foreign national parents, and adjusted her status to that of a lawful permanent resident in 2012. Her parents divorced in [redacted] 2020, and the Applicant's father subsequently naturalized in January 2021.

To determine if the Applicant derived U.S. citizenship from her father, we apply "the law in effect at the time the critical events giving rise to eligibility occurred." *Minasyan v. Gonzales,* 401 F.3d 1069, 1075 (9th Cir. 2005). The last critical event in this case is the naturalization of the Applicant's father in 2021. We therefore consider the Applicant's derivative citizenship claim under section 320 of the Act, as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (CCA), and in effect since 2001. This section provides, in pertinent part, 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.

Moreover, the Applicant must meet the definition of a "child" in section 101(c)(1) of the Act, 8 U.S.C. § 1101(c)(1), which requires, in pertinent part, that during the relevant timeframe she must be an unmarried person under twenty-one years of age.

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. *Matter of Baires*, 24 I&N Dec. 467, 468 (BIA 2008). Under the preponderance of the evidence standard, the Applicant must demonstrate that her claim is "probably true," or "more likely than not." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Applicant has established that she meets several conditions for derivative citizenship under section 320 of the Act. Specifically, her birth certificate, her father's 2021 Certificate of Naturalization, and her lawful permanent resident card evidence collectively show that she was born outside of the United States, she was admitted to the United States as a lawful permanent resident in 2012, she has resided in the United States since at least 2012, and she has a naturalized U.S. citizen parent. Moreover, all of these requirements were satisfied while the Applicant was under the age of eighteen. Therefore, she has satisfied the born outside of the United States, U.S. citizen parent, and residing in the United States pursuant to a lawful admission for permanent residence conditions at sections 320(a)(1), (2), and (3) of the Act.

The Applicant initially provided a copy of her father's Certificate of Naturalization showing that he naturalized on January 13, 2021, at which time he indicated that he was divorced. With respect to the conditions under section 320 of the Act, the regulation at 8 C.F.R. § 320.2 provides that the requirements set forth in the CCA must "have been met after February 26, 2001." Therefore, the Applicant must establish that she was residing in the legal and physical custody of her naturalized U.S. citizen father on or after his date of naturalization in January 2021, and before her eighteenth birthday on [redacted] 2021, in order to show that she automatically acquired U.S. citizenship under these statutory conditions.

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 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 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); *Matter of M-,* 3 I&N Dec. at 856 (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). Thus, the Applicant must establish she resided in the United States in her father's physical custody at some point between the date he became a naturalized U.S. citizen on January 13, 2021, and the date the Applicant turned 18 years old on [redacted] 2021.

On the Form N-600, the Applicant claimed that she and her father were residing at an address on [redacted] Court in [redacted] Florida. However, the Applicant's initial evidence, including copies of her permanent resident card, her Florida Learner's license to drive, her Cuban birth certificate and Cuban passport, her parents' marriage and divorce documents, a June 2020 Quit Claim Deed for property in Florida, federal U.S. income tax returns that her father prepared for the years 2017 to 2019, and her father's Certificate of Naturalization predated the relevant period that began on January 13, 2021, and otherwise lack information to corroborate her claim to have resided in the physical custody of her father in the United States during that time period. Consequently, in the RFE, the Director requested that the Applicant provide additional evidence to show that she had resided in the physical custody of her U.S. citizen parent. However, as the Applicant did not respond, the Director ultimately denied the Form N-600, concluding that the Applicant's evidence was not sufficient to show that she had resided in her U.S. citizen parent's physical custody for purposes of satisfying section 320(a)(3) of the Act.

On appeal, the Applicant resubmits some previously provided evidence, including her parents' marriage certificate and divorce judgment. However, she also provides new evidence, including a student information transcript from [redacted] Senior High showing that she had attended school during the year that ran from September 2020 until June 2021. The transcript lists the Applicant's name, her residential address on [redacted] Court, her father's name as a contact, and reflects that they shared the same contact telephone number. In addition, the Applicant provides a copy of her 2019 driver's license showing that her residence was at the address on [redacted] Court in [redacted] and a copy of her father's 2016 Florida driver's license showing that he claimed the same address. Although the driver's licenses do not show that they were residing together after the father naturalized, they do reflect that the Applicant and her father have claimed to be residing at the same address since at least 2019, when her license was issued, to the present. Moreover, the Applicant provides an employee benefits statement for the 2021 calendar year issued to her father at the residential address on [redacted] Court and reflecting that she is a dependent on his insurance. Consequently, on appeal, the Applicant has submitted evidence that, collectively, is sufficient to show she was residing in the United States in the U.S. citizen parent's physical custody through actual residence with her father at some point between January 13, 2021, and [redacted] 2021. She therefore has shown on appeal that she satisfies the section 320(a)(3) of the Act physical presence conditions.

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." *See* 8 C.F.R. § 320.1 (defining "legal custody"). 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." Moreover, legal custody "implies either a natural right or a court decree." *Matter of Harris,* 15 I&N Dec. 39, 41 (BIA 1970). In this case, the Applicant has the burden of proof to establish that her father was granted legal custody of the Applicant pursuant to the laws of Florida, the location of her parents' divorce. *See* 8 C.F.R. § 320.3(b)(vi) (providing that an applicant must provide documentation of legal custody).

The Applicant initially listed the same residential address for her father and herself and included a copy of her parents' divorce judgment with the Form N-600. According to the divorce judgement, the parents' marital status was terminated effective [redacted] 2020, and a previously filed [redacted] 2020 marital settlement agreement (MSA) was incorporated by reference, as was a parenting plan.[1] However, the referenced MSA and parenting plan were not included with the Applicant's initial documents. Although the Director issued an April 2021 request for evidence (RFE) asking that Applicant provide the MSA and any relevant court documents, the Applicant did not respond with the period of time provided. Consequently, the Director denied the Form N-600, concluding that the Applicant had not provided sufficient evidence to show that she was residing in the United States in the legal and physical custody of a U.S. citizen parent before her eighteenth birthday, a required condition at section 320(a)(3) of the Act.[2]

On appeal, the Applicant claims that she never received the RFE; however, we note that the Director issued the RFE 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. On appeal, rather than provide the requested MSA and relevant court documents such as, for example, the parenting plan referenced in the divorce judgement, the Applicant resubmits the divorce judgement and a notarized statement from her mother, who asserts that when she and the Applicant's father were divorcing, they had decided that the Applicant would reside with the father at the residence on [redacted] Street in [redacted] Florida. However, there is no additional information to clarify or show that the parents' agreement resulted in the Applicant later residing in the *legal* custody of her father during the relevant period after he naturalized in January 2021 and before she turned eighteen years old in [redacted] 2021. Moreover, it remains that the Applicant has not provided the MSA that was incorporated into the divorce judgment by reference and which was specifically requested by the Director in the April 2021 RFE. Consequently, even though the Applicant submitted documents on appeal, she has still not provided us with the MSA requested by the Director and any other relevant court evidence to demonstrate she was in her father's legal custody from January to [redacted] 2021.

IV. CONCLUSION

The Applicant has not shown that she resided in the United States in the legal custody of her U.S. citizen father at some point after his naturalization on January 13, 2021, and before the Applicant's eighteenth birthday on [redacted] 2021, as required to satisfy the residing in the legal custody condition

[1] The Applicant's parents are not considered to have been legally separated until the date of their divorce for purposes of this Form N-600. *Matter of H,* 3 I&N Dec. at 744.

[2] The RFE was issued in April 2021, and the Applicant was afforded until July 2021 to respond, in accordance with the USCIS policy governing extended response times during the COVID-19 pandemic.

at section 320(a)(3) of the Act. As such, the Applicant is ineligible for a Certificate of Citizenship and her Form N-600 remains denied.

ORDER: The appeal is dismissed.