



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

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

In Re: 20009363

Date: FEB. 1, 2022

Appeal of Las Vegas, Nevada Field Office Decision

Form N-600, Application for a Certificate of Citizenship

The Applicant seeks a Certificate of Citizenship to reflect that she derived citizenship from her adoptive U.S. citizen mother under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431. Generally, to establish derivative U.S. citizenship under that section of the Act, a person who was born abroad must satisfy certain conditions before turning 18 years of age.

The Director of the Las Vegas, Nevada Field Office denied the Form N-600, concluding that the Applicant was not eligible to derive citizenship because she was over 18 years of age when she was admitted to the United States as a lawful permanent resident.

On appeal, the Applicant submits additional evidence and explains that due to the visa processing- and pandemic-related delays she was not able to enter the United States as an immigrant until the day before her 18th birthday.

Upon *de novo* review, we will remand the matter to the Director for further proceedings consistent with our opinion below and for the entry of a new decision.

I. LAW

In adjudicating the Applicant's derivative citizenship claim, 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 record reflects that the Applicant was born in the Philippines on [REDACTED] 2003. She was adopted there in [REDACTED] 2015 at the age of 12 years, and her adoptive mother naturalized as a U.S. citizen several months later, in October 2015. On [REDACTED], 2021, the Applicant was admitted to the United States at Dallas, Texas as a lawful permanent child of a U.S. citizen (IR-2) based on an immigration visa petition her adoptive mother filed on her behalf.

Based on the Applicant's 2003 date of birth, we consider her citizenship claim under current section 320 of the Act, as in effect since 2001.

Section 320 of the Act 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).

Because the parent-child relationship between the Applicant and her U.S. citizen mother was created by adoption, the Applicant must satisfy the additional requirements section 320(b) of the Act. The term “adopted child” for derivative citizenship purposes means a person who has been adopted pursuant to a full, final, and complete adoption, and who also meets the requirements of section 101(b)(1)(E) or (F) of the Act, 8 U.S.C. § 1101(b)(1)(E) or (F). 8 C.F.R. § 320.1. That section mandates, in part, that a child must be adopted while under the age of 16 years, and must be in the legal custody of, and reside with the adopting parent or parents for at least two years, to derive U.S. citizenship.

As the Applicant was born abroad, she is presumed to be a noncitizen and bears the burden of establishing her claim to U.S. citizenship by a preponderance of credible evidence. *Matter of Baires-Larios*, 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 only issue on appeal is whether the Applicant has demonstrated that she was under the age of 18 years when she began residing in the United States as a lawful permanent resident, as required under sections 320(a)(2)-(3) of the Act.¹

As stated, the Director determined that the Applicant did not meet this requirement. In making this determination, the Director calculated that the Applicant’s lawful admission to the United States for permanent residence occurred on “the 6,575th day, or eighteen (18) years since [her] birth on

¹ The Director did not address whether the Applicant satisfied the remaining eligibility criteria under section 320 of the Act.

[redacted] 2003.”² The Director reasoned that while a birthday is typically celebrated on the anniversary of a person’s birth, the specific language in section 320 of the Act indicated that all requirements for derivative citizenship must be met “prior to obtaining the age of eighteen (18) years.”

While the U.S. Citizenship and Immigration Services (USCIS) Policy Manual does not currently provide specific guidance on how to calculate a person’s age for derivative citizenship purposes, relevant case law indicates that the person’s age is determined based on the date of the person’s 18th birthday, rather than based on the number of days that have passed since that person’s birth. *See Matter of L-M- and C-Y-C-*, 4 I&N Dec. 617 (BIA 1952) (providing that “prior to” included “prior to or on” the date with respect to retention requirements for acquisition of citizenship); *see also Duarte-Ceri v. Holder*, 630 F.3d 83, 88 (2d Cir. 2010) (holding that an individual who was born in evening, and whose mother naturalized as a U.S. citizen in the morning on same day 18 years later “has not yet lived in the world for eighteen years” and was therefore “under the age of eighteen years” for the purposes of derivative citizenship under former section 321 of the Act).

Here, USCIS records show that the Applicant was admitted to the United States as a lawful permanent resident at Dallas, Texas at 4:12 p.m. on [redacted] 2021, the day before her 18th birthday which fell on [redacted] 2021. As such, the Applicant was under the age of 18 years when she was lawfully admitted and began residing in the United States as a permanent resident.

As the sole reason for the denial of the Applicant’s request for a Certificate of Citizenship has been overcome, we will return the matter to the Director to determine whether the Applicant has satisfied the remaining conditions for derivative citizenship under section 320 of the Act and to enter a new decision, accordingly.

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

² The Director did not explain whether this calculation was based on the Applicant’s actual time of birth in the Philippines and if it included leap years.