



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

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

In Re: 18069138

Date: JAN. 27, 2022

Appeal of Chicago, Illinois Field Office Decision

Form N-600, Application for Certificate of Citizenship

The Applicant seeks a Certificate of Citizenship to reflect that he derived U.S. citizenship from his father under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The Director of the Chicago, Illinois Field Office denied the Form N-600, concluding that the Applicant did not respond to a request for evidence (RFE) that his U.S. citizen father had been physically present in the United States for at least five years prior to the Applicant's birth, no less than two of which were after the age of 14 years.

On appeal, the Applicant submits additional evidence relating to his U.S. citizen father's physical presence in the United States.

Because the Applicant was born abroad, he is presumed to be a foreign national and bears the burden of establishing his 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 his claim is "probably true," or "more likely than not." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

Upon *de novo* review, we will remand the matter for proceedings consistent with this decision.

The Applicant was born out of wedlock in Mexico in [ ] 2011, and his parents subsequently married in 2014. The Applicant was admitted to the United States as a lawful permanent resident in February 2015, at the age of three. His father is U.S. citizen through birth, as birth certificate evidence shows he was born in [ ] Illinois in [ ] 1990.

The Director denied the Form N-600, finding that the Applicant was not eligible for a Certificate of Citizenship under sections 320 and 301 of the Act. The Director appears to have based his conclusion on the fact that the Applicant had not responded to a request for additional evidence that his father had been physically present in the United States for at least five years prior to the Applicant's birth in 2011, no less than two of which were after the age of 14 years, a section 301(g) of the Act condition. In the denial, the Director stated that the requested documentation was needed "[i]n order to determine the correct section of law [under] which [the Applicant] became a U.S. citizen," but then found that

the Applicant was not eligible for Certificate of Citizenship under the provisions of sections 320 *and* section 301 of the Act.

On appeal, the Applicant provides additional evidence of his father's physical presence in the United States. However, the evidence requested by the Director relates only to section 301(g) of the Act and is not material to adjudication of a Form N-600 under section 320 of the Act conditions.<sup>1</sup> Section 320 of the Act conditions apply to a child born outside of the United States when: (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; and (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. However, these requirements do not include requirements that the U.S. citizen parent have had physical presence in the United States. The Director's decision does not explain why the requested evidence was required for an adjudication of the Form N-600 under section 320 of the Act or why the Applicant is ineligible under its provisions.

With respect to the Applicant's claim that he seeks to show he has derived U.S. citizenship under section 320 of the Act conditions, 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). The Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), which took effect on February 27, 2001, amended sections 320 and 322 of the Act and repealed section 321 of the Act. The amended provisions of sections 320 of the Act apply to individuals who were not yet 18 years old as of February 27, 2001. Because the Applicant was born after 2001, his citizenship claim must be considered under the provisions of section 320 of the Act, as he requests.

Because the Director does not appear to have considered whether the Applicant automatically derived U.S. citizenship under section 320 of the Act conditions, we are returning the matter to the Director to determine whether or not the Applicant has satisfied those requirements.

**ORDER:** The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing analysis.

---

<sup>1</sup>In this case, the Applicant's father is a U.S. citizen, the Applicant is under 18 years of age, and it appears that he is a lawful permanent resident. To satisfy other section 320 of the Act conditions, the evidence of record must demonstrate that the Applicant is residing in the United States in the legal and physical custody of his U.S. citizen parent pursuant to a lawful admission for permanent residence.