U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22718846

Date: OCT. 3, 2022

Appeal of New York, New York 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), 8 U.S.C. § 1431.

The Director of the New York, New York Field Office denied the Form N-600, Application for Certificate of Citizenship (Form N-600), concluding that the Applicant was not eligible for a Certificate of Citizenship under section 320 of the Act because she had not shown that she had resided in the legal and physical custody of her U.S. citizen parent during the relevant period, which is after her admission to the United States as a lawful permanent resident and prior to turning 18 years of age.

On appeal, the Applicant submits documents that she had previously provided in response to the Director's request for evidence (RFE), as well as new documents.

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

I. LAW

The Applicant was born in Ghana in [redacted] 2002, to unmarried foreign national parents. Her father became a naturalized U.S. citizen in June 2020. The Applicant does not claim or provide evidence to show that her mother is U.S. citizen. She seeks to show that she derived U.S. citizenship solely through the father. The Applicant was admitted to the United States in June 2015 at the age of 12 years.

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). Here, section 320 of the Act, as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (CCA), applies to the Applicant's derivative citizenship claim, as she was born after the CCA was enacted on February 27, 2001, and her father also became a U.S. citizen after the provision went into effect.

Section 320 of the Act 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:
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> (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
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> (2) The child is under the age of eighteen years.
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> (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:

> 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 . . . if such legitimation . . . takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating . . . parent or parents at the time of such legitimation . . . .

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 satisfied the conditions in section 320(a)(1) of the Act prior to her eighteenth birthday, as birth certificate evidence shows that she was born outside the United States in Jamaica in [redacted] 2002 and her father's June 2020 Certificate of Naturalization shows that she has a parent who is a U.S. citizen through naturalization. She also met the definition of a child under the relevant section 101(c)(1) of the Act provisions in that she claims on the Form N-600 to have never married and there is no evidence in the record to contradict this; her birth certificate shows the parent-child relationship with her biological father; and she is considered legitimated under the laws of Jamaica before the age of 16 years.[1] Further, the record shows that the Applicant was admitted to the United States as a lawful

[1]In *Matter of Cross*, 26 I&N Dec. 485 (BIA 2015), the Board of Immigration Appeals (the Board) held that the Jamaican Status of Children Act (JSCA) of 1976 eliminated all distinctions between children born in and out of wedlock. Thus, under *Matter of Cross*, a child born out of wedlock who was under 18 years of age on the effective date of the JSCA, or born on or after that date, qualified as the legitimated child of his or her father if the requirements for acknowledgment under Jamaican law were met before the child's 18th birthday. The Board also interpreted section 101(c) of the Act so that

permanent resident in June 2015, which partially satisfies section 320(a)(3) of the Act. The remaining issues on appeal are whether the Applicant has shown that she was residing in her father's legal and physical custody in the United States as a lawful permanent resident sometime after he became a U.S. citizen in June 2020 and prior to her eighteenth birthday in [redacted] 2020, as required by sections 320(a)(2) and (3) of the Act.

B. Physical Custody under Section 320 of the Act

Neither the Act nor the regulations define the term "physical custody." However, the Board of Immigration Appeals has 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 e. g., Matter of M-,* 3 I&N Dec. 850, 856 (BIA 1950) (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 U.S. citizen father's physical custody at some point between his naturalization in June 2020 and her eighteenth birthday in [redacted] 2020.

On her Form N-600, the Applicant stated that her parents were not married when she was born and that they did not subsequently marry. At the time she filed the Form N-600 in October 2020, she claimed to be residing with her father at a residence on [redacted] Avenue in [redacted] New York. She submitted a copy of her father's Certificate of Naturalization and U.S. passport, as well as her permanent resident card and birth certificate. The Director issued an RFE seeking evidence that the Applicant had resided in the physical custody of her U.S. citizen parent between the latter's naturalization in June 2020 and the Applicant's eighteenth birthday in [redacted] 2020. The Applicant again provided a copy of her father's Certificate of Naturalization and U.S. passport. She also included utility records addressed to her father and some of her own school records; however, the Director found that these did not show that the Applicant had resided in the legal and physical custody of her U.S. citizen parent during the relevant period and denied the Form N-600.

On appeal, the Applicant again provides some previously submitted documentation, including her father's Certificate of Naturalization, his U.S. passport, and her school records for the period of 2017 through the first semester of 2020. She also includes a marriage certificate showing that her father married the Applicant's stepmother in 2013. Although the school documents list the Applicant's former address, they relate to a period of time that predates the relevant period that began with her father's naturalization in June 2020, and the remaining documents are devoid of residential or legal custody information showing that the Applicant was residing in her father's actual physical custody at some point on or after the date of his naturalization in June 2020 and prior to the Applicant's eighteenth birthday in [redacted] 2020.

Also on appeal, the Applicant includes bills, bank statements, and earnings records addressed to her father and her stepmother at a residence on [redacted] Avenue in the [redacted] New York between June and

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an individual "born abroad to unmarried parents can be a 'child' for purposes of section 320(a) [of the Act] if he or she is otherwise eligible and was born in a country or State that had eliminated legal distinctions between children based on the marital status of their parents . . . ."

[redacted] 2020. However, the Applicant is not included on these documents; therefore, they only show where her father was residing during this period. The Applicant also provides her 2020 Internal Revenue Service Form W-2, Wage and Tax Statement (IRS Form W-2), addressed to her at the residence on [redacted] Avenue. However, while this document shows the Applicant claimed the [redacted] Avenue residence at some point during 2020, it do not show that she was residing in the actual physical custody of her father at some point specifically during the relevant period beginning in June 2020 and ending on the Applicant's eighteenth birthday in [redacted] 2020. Finally, she includes a statement from her stepmother's father, C-B-,[2] who contends that the Applicant and her father were among the family members who resided with him at the [redacted] Avenue residence during the relevant period between June and [redacted] 2020. However, given the lack of corroborating information in the Applicant's remaining evidence, this statement is not sufficient to show that the Applicant resided in her father's actual physical custody during the period claimed by C-B-, for purposes of satisfying section 320(a)(3) of the Act.

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"). In addition, legal custody "implies either a natural right or a court decree." *Matter of Harris,* 15 I&N Dec. 39, 41 (BIA 1970).

The Director's denial included a separate finding that the Applicant had not established that she resided in the legal custody of her father during the relevant period that began with his naturalization in June 2020 and ended with her eighteenth birthday in [redacted] 2020.

On appeal, the Applicant asserts that she is providing "all the information that was requested regarding [her]" Form N-600, but does not make any assertions on appeal with respect to having resided in the *legal* custody of her father during the relevant period or contend that the Director's finding that she has not satisfied the separate *legal* custody condition at section 320(a)(3) of the Act was incorrect. Since the identified basis for denial is dispositive of her appeal, we decline to reach and hereby reserve the Applicant's appellate arguments regarding whether or not she has provided all requested information to show that she resided in the legal custody of her U.S. citizen father at some point during the relevant period. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

In this case, the Applicant has not shown below or on appeal that she resided in physical custody of her father at some point on or after the date of his naturalization in June 2020 and prior the Applicant turning 18 years old in [redacted] 2020. As a consequence, she has not demonstrated that she derived U.S. citizenship through her father under section 320 of the Act.

ORDER: The appeal is dismissed.

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[2] We withhold the name to protect the individual's identity.