U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24378621

Date: FEB. 23, 2023

Appeal of Los Angeles, California 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 father under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The Director of the Los Angeles, California Field Office denied the application, concluding that the Applicant did not establish her father had legal custody because she did not provide her parents' divorce decree with custody order, as requested. The matter is now before us on appeal. 8 C.F.R. § 103.3.

On appeal, the Applicant explains that she was not able to provide her parents' divorce decree, because her parents were never married to each other and therefore did not divorce. She reasserts that she meets all of the conditions to derive U.S. citizenship from her father as his legitimated child.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). 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 sustain the appeal.

I. LAW

The Applicant was born in El Salvador in [redacted]2003 to unmarried noncitizen parents. Her father naturalized as a U.S. citizen in 2013, and in 2016 he filed a Form I-130, Petition for Alien Relative (petition) to classify the Applicant as his child for immigration purposes.[1] The petition was approved, and in 2017 at the age of 14 years the Applicant was admitted to the United States as a lawful permanent resident.

[1] The father represented on the Form I-130 that he was married twice, but neither of his spouses was the Applicant's mother. The record includes the father's 2013 decree of divorce from his first spouse, and a 2014 marriage certificate to the Applicant's stepmother. The Applicant indicated on her Form N-600 that her father and stepmother remain married. There is nothing in the record to suggest that the Applicant's father and her biological mother were ever married to each other.

In adjudicating the Applicant's 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 last critical event in this case is the Applicant's admission to the United States for permanent residence in 2017, when she was 14 years of age. Accordingly, we consider her derivative citizenship claim under section 320 of the Act, as in effect since 2001.

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.
>
> (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.

The term "child," as used in section 320 of the Act includes children who were born to unmarried parents and 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[2] and the child is in the legal custody of the legitimating parent. Section 101(c)(1) of the Act, 8 U.S.C. § 1101(c)(1).

Because 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).

II. ANALYSIS

There is no dispute that the Applicant has met some of the above conditions, as she had a U.S. citizen father and was admitted to the United States as a lawful permanent resident when she was under 18 years of age. The remaining issues are: (1) whether the Applicant has established that she qualifies as her father's "child" for the purposes of derivative citizenship under section 320 of the Act and, if so (2) whether she has demonstrated she was residing in the United States in her father's legal and physical custody as a lawful permanent resident before turning 18 years old in April 2021.

We have reviewed the entire record as supplemented on appeal, and conclude that the Applicant met her burden of proof to show that she met both those requirements during the relevant period before her 18th birthday.

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[2] Because all of the conditions in section 320 of the Act must be satisfied before the child's 18th birthday, U.S. Citizenship and Immigration Services allows legitimation for the purposes of section 320 of the Act to occur until the age of 18 years. *See generally* 12 *USCIS Policy Manual* H.2(B) n. 17, https://www.uscis.gov/policy-manual. In addition, a legitimated child is presumed to be in the legal custody of the legitimating parent. *See Matter of Rivers*, 17 I&N Dec. 419, 422 (BIA 1980).

A. The Applicant Qualifies as her Father's "Child" for the Purposes of Derivative Citizenship

As stated, pursuant to section 101(c) of the Act a person who, like the Applicant was born out of wedlock is considered a "child" for derivative citizenship purposes only if they were legitimated while in the legitimating parent's legal custody. Thus, to prevail on her citizenship claim the Applicant must first show that she was legitimated either in El Salvador where she resided prior to immigrating to the United States, or in California—her father's place of residence.

Legitimation is the act of putting a child born out of wedlock in the same legal position as a child born in wedlock. *See Matter of Cabrera*, 21 I&N Dec. 589, 591 (BIA 1996). The Board of Immigration Appeals (the Board) held "that a person born abroad to unmarried parents can be a 'child' for purposes of section 320(a) of the Act if they are otherwise eligible and were born in a country or State that had eliminated legal distinctions between children based on the marital status of their parents or had a residence or domicile in such a country or State (including a State within the United States)." *See Matter of Cross*, 26 I&N Dec. 485, 492 (BIA 2015).

The Applicant asserts, citing *Matter of Moraga*, 23 I&N Dec. 195 (BIA 2001) that she was legitimated by her father in El Salvador because changes in Salvadoran law placed children born out of wedlock in the same legal position as children born in wedlock, and her father registered her birth, thereby establishing paternity. We agree.

The Board held in *Matter of Moraga*, that a child born out of wedlock in El Salvador on or after December 16, 1965, is placed in the same legal position as one born in wedlock once the child's paternity is established. *Id.* at 198. Here, the record includes the Applicant's timely registered birth certificate, which identifies both her parents and reflects that her father appeared before a local family status registrar in El Salvador to register the birth. The Applicant's timely registered birth certificate is sufficient evidence of her paternity and, as El Salvador eliminated legal distinctions between children based on the marital status of their parents before the Applicant's birth in 2003, she qualifies as her father's "child" for purposes of section 320 of the Act pursuant to the holdings in *Matter of Cross*.[3]

B. Legal and Physical Custody Requirements Met

The Applicant has also demonstrated that she meets the legal and physical custody conditions in section 320(a)(3) of the Act.

1. Legal Custody

"Legal custody" refers to the responsibility for and authority over a child. 8 C.F.R. § 320.1. U.S. Citizenship and Immigration Services will presume, in relevant part that a U.S. citizen parent has legal custody of a child, absent evidence to the contrary in the case of a biological child born out of wedlock who has been legitimated and currently resides with the natural parent. 8 C.F.R. § 320.1(1)(iii).

[3] Accordingly, we need not address whether the Applicant was legitimated under the law of her father's residence in California.

As discussed, the Applicant has shown that her father legitimated her in El Salvador shortly after she was born. The preponderance of the evidence is also sufficient to establish that the Applicant resided with her father in the United States during the relevant period after she was admitted to the United States for permanent residence in 2017, and before she turned 18 years of age in [redacted]2021.

Specifically, the evidence includes copies of the Applicant's and her father's California identification card and driver's license, respectively, listing the same residential address. The Applicant also provided copies of her father's 2018-2020 federal income tax returns, which reflect that the father claimed the Applicant as his dependent household member for tax purposes in those years. Lastly, the 2021 California school record the Applicant submits on appeal identifies the Applicant's father as her parent/guardian, and lists the same residential address as indicated in the Applicant's and her father's identity and tax documents.

As this evidence shows that the Applicant resided in the United States with her U.S. citizen father who legitimated her, the legal custody presumption in 8 C.F.R. § 320.1(1)(iii) has been met. And because this evidence also points to the Applicant's residence with her father after she was admitted to the United States for permanent residence in 2017 and before she turned 18 years old in [redacted]2021, we conclude that the Applicant meets the *legal custody* requirement in section 320(a)(3) of the Act.

2. Physical Custody

The same evidence is also sufficient to establish that the Applicant satisfies the *physical custody* condition in section 320(a)(3) of the Act.

Although not defined in the Act and regulations, the term *physical custody* has been interpreted in the context of derivative citizenship proceedings to mean actual residence with the parent. *See Matter of M-*, 3 I&N Dec. 850, 856 (BIA 1950). As discussed above, the information in the identity, school, and tax documents indicates that the Applicant has been residing in California with her father since at least 2018 and prior to her 18th birthday in [redacted]2021.

We conclude therefore that the Applicant has demonstrated she was residing in her U.S. citizen father's physical custody in the United States as a lawful permanent resident before she was 18 years old. Thus, she also meets the physical custody condition under section 320(a)(3) of the Act.

III. CONCLUSION

The Applicant has met her burden of proof to establish that she satisfied all relevant requirements to derive U.S. citizenship from her father under section 320 of the Act before turning 18 years of age. She is therefore eligible for issuance of a Certificate of Citizenship.

ORDER: The appeal is sustained.