U.S. Citizenship and Immigration Services

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

In Re: 23780106

Date: FEB. 28, 2022

Appeal of Chicago, Illinois Field Office Decision

Form N-600, Application for a Certificate of Citizenship

The Applicant seeks a Certificate of Citizenship to reflect that she derived U.S. citizenship from a U.S. citizen parent 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 application, concluding that the record did not establish that that the Applicant was residing in the United States in the legal and physical custody of a U.S. citizen parent pursuant to a lawful admission for permanent residence prior to turning 18 years of age. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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 dismiss the appeal.

## I. LAW

The Applicant was born in Pakistan in [redacted] 1995, to married foreign national parents. The Applicant was admitted to the United States as a lawful permanent resident in May 1998; however, her father returned to Pakistan with the Applicant in December 1998, where he divorced her mother in 2001. The Applicant's mother subsequently naturalized in February 2006, and her father naturalized in April 2006. The Applicant was last admitted to the United States as a lawful permanent resident in December 2007, and departed the United States to resume residing in Pakistan in February 2008. She initially claimed to derive U.S. citizenship from her naturalized U.S. citizen father; however, on appeal she also claims to have derived U.S. citizenship through her U.S. citizen mother.

To determine if the Applicant derived U.S. citizenship from a U.S. citizen parent, 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 lawful admission to the United States as a permanent resident in December 2007. 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. Section 320(a) of the Act provides, in pertinent part, that:

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).

## II. ANALYSIS

The Applicant has established that she meets several conditions for derivative citizenship under section 320 of the Act. Specifically, her 1995 birth certificate from Pakistan and her parents' 2006 Certificates of Naturalization collectively show that the Applicant was born outside of the United States, the parent-child relationship with both of her parents, that she has at least one naturalized U.S. citizen parent. Moreover, these requirements were satisfied before the Applicant turned 18 years of age in [redacted] 2013. Therefore, she has satisfied the born outside of the United States and U.S. citizen parent conditions at sections 320(a)(1) and (2) of the Act. Further, the record shows that the Applicant was admitted to the United States as a lawful permanent resident in December 2007, which partially satisfies section 320(a)(3) of the Act conditions. 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 never to have married and there is no evidence in the record to contradict this. However, the Director denied the application, concluding that the Applicant did not show that she satisfied the conditions at section 320(a)(3) of the Act as she has not established that she was residing in the United States in the legal and physical custody of a U.S. citizen parent pursuant to admission as a lawful permanent resident through actual residence in the United States on or after the U.S. citizen parent naturalized and prior to her 18th birthday.[1]

In this case, as will be discussed, the Applicant has not first shown that she was residing in the United States at some point on or after her mother naturalized in February 2006 or her father's naturalization

[1] The Applicant also states on appeal that the Director erred in stating that the Applicant turned 18 years of age in [redacted] 1995, whereas she turned 18 years old in [redacted] 2013. However, this reference was harmless error on the part of the Director and the remainder of the Director's decision is premised on the Applicant's accurate date of birth in [redacted] 1995.

in April 2006. As this basis for denial is dispositive of the Applicant's appeal, we decline to reach and hereby reserve the issues as to whether the Applicant has separately shown that she resided in the *legal and physical custody* of a U.S. citizen parent pursuant to her admission as a lawful permanent resident at some point during the relevant period before she turned 18 years of age. *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).

Under the Act, "[t]he term 'residence' means the place of general abode; the place of general abode of a person means the principal, actual dwelling place in fact, without regard to intent." Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33).

On the Form N-600, the Applicant listed a U.S. mailing address but separately indicated that her physical address, and that of her father, is in Pakistan. On an index listing her supplemental evidence, she indicated that her relevant proof of residence is: (1) her Form I-551, permanent resident card, issued to her in 1998; and (2) an Illinois state identification card, issued to her in December 2007, and listing an address in [redacted] Illinois. The record also includes numerous court records relating to an emergency custody petition that the Applicant's mother filed in Illinois, in addition to the father's response, and cross filings. The Director issued a request for additional evidence showing, among other things, where the Applicant and her father had resided since the father's naturalization in 2006, including documents such as her U.S. school and medical records, a state identification card or driver's license for her father, her school records from Pakistan, and her father's federal U.S. federal income tax transcripts for all of the tax years since her father's naturalization until the Applicant turned 18 years of age. However, the record before us does not reflect the Applicant's response to the Director's request for evidence.[2] The Director denied the Form N-600, concluding in pertinent part that the Applicant had not shown that she was residing in the United States at some point after her father's naturalization in 2006.

On appeal, the Applicant submits only a brief. She confirms that she moved from the United States to Pakistan in 1998, and that her mother remained in the United States. However, the Applicant asserts that the Director incorrectly discounted the fact that she had resided in the United States in the legal and physical custody of her U.S. citizen father after they reentered the United States on or about December 10, 2007, until they returned to Pakistan in February 2008. In the alternative, she asserts that she resided with her U.S. citizen mother on January 15, 2008.

Although the Applicant was physically present in the United States from approximately December 10, 2007, until February 2008, she has not shown that she was *residing* in the United States within the meaning of section 101(a)(33) of the Act. For example, although she has provided one Illinois Identification Card issued to her in December 2007 (when she was about 12 years old) with an address in Illinois, she has not shown that this address was her principal, actual dwelling place. On appeal, she submits a brief, but does not include additional evidence. We also note that the 2008 court records

[2] We note that the Director's decision also refers to school records indicating that the Applicant had not enrolled in school in the United States at any time after December 1998; however, the record on appeal does not include any such school records from the Applicant.

she provided below include her father's 2008 Motion to Dismiss Petitioner's Emergency Petition for Temporary Custody of Minor Children and for Temporary Restraining Order. In his petition, the father alleged that the Petitioner and her sister have resided with him in Pakistan since 1999, and that they returned to the United States in December 2007 for the purpose of renewing their visas and had intended to stay for only a few days. Additionally, contrary to the 2007 Illinois identification card for the Applicant, the father specifically asserted that the Applicant and her sister were not residents of Illinois, where the court proceedings were being held. He alleged that the Applicant's mother (who the court had granted visitation with the Applicant) was refusing to allow him contact with the Applicant, but that it was his intention was to return the Applicant to their home in Pakistan to resume her education and life there. The father's assertions in this document are inconsistent with the Applicant's current claim that she was physically residing with her father in the United States, and that the United States was her principal, actual dwelling place, during this same period. Consequently, the Applicant has not established that she was residing in the United States in the physical custody of her U.S. citizen father at some point from December 2007 to February 2008, when she departed the United States.

In the alternate, the Applicant claims on appeal that she was residing in the United States in the legal and physical custody of her mother on January 15, 2008, as evidenced by a court order issued by the court in [redacted] County, Illinois in [redacted] 2008. However, the court order shows only that the Applicant's mother was granted temporary visitation of the Applicant at an unspecified location for a period of four hours on [redacted] 2008, and includes language prohibiting the mother from keeping the Applicant overnight. The Applicant has not shown how this limited, temporary visitation with her mother establishes that the Applicant's "principal actual dwelling place" was with her mother in the United States. Consequently, this evidence does not show that the Applicant was residing in the United States in the legal and physical custody of her U.S. citizen mother.

The Applicant cites to several court cases for the proposition that her physical presence in the United States with her U.S. citizen father from December 2007 to February 2008 satisfies the definition of residence at section 101(a)(33) of the Act. *See generally Alcarez-Garcia v. Ashcroft*, 293 F.3d 1155 (9th Cir. 2002); *Garlasco v. Dulles*, 243 F.2d 679, 681-682 (2d Cir. 1957); *Matter of V.V.*, 7 I&N Dec. 122, 123 (BIA 1956); and *Matter of M-*, 7 I&N Dec. 643, 645 (BIA 1958). In *Alcarez-Garcia*, an individual who demonstrated that he had lived and worked on a farm in Texas for nine months each year over a period of nine years had shown that he was residing in the United States during those periods, and in *Garlasco*, a naturalized U.S. citizen who had resided in the United States for approximately 45 years, moved to Italy, and then returned to the United States and lived in a hotel with his wife for two months also demonstrated that he was residing in the United States for purposes of retaining his U.S. citizenship. In the two Board of Immigration Appeals cases the Applicant cited, the individuals demonstrated that they were residing in the United States through lengthy periods of stay in either a U.S. boarding school or university for purposes of transmitting citizenship to a child. However, unlike these cases, apart from her own assertions and a single Illinois identification card issued to her on December 10, 2007, the Applicant has not submitted evidence establishing that she was residing in the United States in the physical custody of either of her U.S. citizen parents during the period from December 2007 to February 2008, when she departed the United States, and likewise has not submitted any additional evidence on appeal to establish her eligibility. Further, during the two to three month period she claims to have resided in the United States from December 2007 to February 2008, the 2008 court filings in the record show that she was in the United States to renew

her lawful permanent resident status and that her actual residence was in Pakistan and not in the United States.

The burden of proof remains on the Applicant to establish her eligibility for a Certificate of Citizenship. *Matter of Baires*, 24 I&N Dec. at 468. It remains that the Applicant's evidence does not show that her "place of general abode" and "principal actual dwelling place in fact, without regard to intent" was in the United States at some point during the relevant period between the date of at least one of her parents' naturalizations in 2006 until she turned 18 years of age in December 2013. Section 101(a)(33) of the Act. Consequently, the Applicant has not first satisfied the *residing* in the United States condition at section 320(a)(3) of the Act at some point during the relevant period on or after the naturalization of her U.S. citizen parents in 2006 and before her 18th birthday. For this reason, the Applicant is not eligible for a Certificate of Citizenship, and the Form N-600 remains denied.

## III. CONCLUSION

In this case, the Applicant has not shown that she *resided* in the United States in the legal and physical custody of a U.S. citizen parent at some point on or after the parent's naturalization in 2006 and prior the Applicant turning 18 years old in 2013. As a consequence, she has not demonstrated that she derived U.S. citizenship through a U.S. citizen parent under section 320 of the Act.

**ORDER:** The appeal is dismissed.