U.S. Citizenship and Immigration Services

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

In Re: 26480997

Date: MAY 3, 2023

Appeal of Houston, Texas Field Office Decision

Form N-600, Application for Certificate of Citizenship

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

The Director of the Houston, Texas Field Office denied the Form N-600, concluding that the Applicant did not establish, as required that he resided in the United States in his father's legal and physical custody. The matter is now before us on appeal.

On appeal, the Applicant submits additional documents to show that he lived in Texas with his father, and reasserts eligibility.[1]

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 record reflects that the Applicant was born abroad in [redacted] 1991 to noncitizen parents. In 2002, when he was 10 years old, his father naturalized as a U.S. citizen and successfully petitioned for the Applicant to immigrate to the United States as his child. In 2007, at the age of 15 years the Applicant was admitted to the United States as a lawful permanent resident.

To determine whether the Applicant derived U.S. citizenship from his father,[2] 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 documented critical event in this case is the Applicant's

[1] The Applicant also submits a copy the denial of his Form N-400, Application for Naturalization, in which the Director indicated that the Applicant acquired U.S. citizenship from his father and was therefore ineligible to naturalize as a U.S. citizen. We note, however, that the Director's preliminary finding concerning the Applicant's ineligibility for naturalization is not binding in the instant derivative citizenship proceedings. Moreover, if the Applicant does not establish eligibility for a Certificate of Citizenship the Director may reopen the Applicant's naturalization proceedings to enter a new decision on the Form N-400.

[2] There is no evidence that the Applicant's mother naturalized as a U.S. citizen.

admission to the United States for permanent residence in February 2007, when he was 15 years of age. We therefore consider his derivative citizenship claim under section 320 of the Act, as in effect since February 27, 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:
>
> (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 in wedlock, as well as those 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. Section 101(c)(1) of the Act, 8 U.S.C. § 1101(c)(1).

Because the Applicant was born abroad, he is presumed to be a noncitizen and bears the burden of establishing his 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 show that his citizenship claim is "probably true," or "more likely than not." *Matter of Chawathe*, 25 I&N Dec. at 375-376.

## II. ANALYSIS

There is no dispute that the Applicant meets some of the above requirements, as the record shows that he was under the age of 18 years when his father naturalized, and when he was admitted to the United States as a lawful permanent resident. The remaining issue is whether the Applicant has shown he was residing in the United States in his father's legal and physical custody during the relevant period before his 18th birthday, as required under section 320(a)(3) of the Act.

Upon review of the entire record, including the additional documentation submitted on appeal we conclude that the Applicant has met his burden of proof to establish that he satisfied the requirement of residing in his father's *physical* custody. Nevertheless, the record remains insufficient to determine whether the Applicant meets the *legal* custody condition. Consequently, the Applicant has not demonstrated he fulfilled all of the derivative citizenship conditions in section 320 of the Act.

A. Physical Custody

While undefined in the statute 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).

The record, as supplemented on appeal contains sufficient evidence to demonstrate that the Applicant satisfied the physical custody requirement through actual residence with his father in Texas before he turned 18 years old. Specifically, the information on the Applicant's 2007 immigrant visa and related documents shows that he was coming to the United States to reside with his father in Texas. In addition, the father's residential address is listed on the previously provided Applicant's 2008-2009 school transcript, which also identifies the Applicant's father as his parent and guardian. On appeal the Applicant submits copies of his Texas identification documents, additional school transcripts, and his father's 2007-2008 bank account statements, which indicate that he and his father lived at the same address from at least February 2007 through June 2009. This evidence, considered in the aggregate is sufficient to show that the Applicant has been residing with his father after he was admitted to the United States as a lawful permanent resident in 2007, and thereafter before he turned 18 years of age in [redacted]2009. The Applicant therefore meets the physical custody requirement in section 320(a)(3) of the Act, and we withdraw the Director's determination to the contrary.

B. Legal Custody

Nevertheless, the Applicant has not demonstrated he meets the legal custody requirement in section 320(a)(3) of the Act.

"Legal custody" refers to the responsibility for and authority over a child. 8 C.F.R. § 320.1. U.S. Citizenship and Immigration Services (USCIS) 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 who currently resides with a surviving natural parent (if the other parent is deceased). 8 C.F.R. § 320.1(1)(ii). In the case of a child of divorced or legally separated parents, USCIS will find a U.S. citizen parent to have legal custody of a child, for the purpose of section 320 of the Act, where there has been an award of primary care, control, and maintenance of a minor child to a parent by a court of law or other appropriate government entity pursuant to the laws of the state or country of residence. 8 C.F.R. § 320.1(2).

As an initial matter, the Applicant has not established which of those two legal custody presumptions applies in his case. While he represented on the Form N-600 that his parents were married to each other when he was born, the parents' marital status is not included in his birth record, and he did not provide their marriage certificate. Furthermore, while the Applicant indicated that his father has been married for the second time since 2003, he did not provide a copy of his parents' divorce decree with a custody order or any other document to establish that his father was granted legal custody by a court of law or other appropriate government entity.[3]

[3] We note that on the Form I-130, Petition for Alien Relative, the father filed on the Applicant's behalf in 2003 he represented only that in 1993 he was divorced from a woman who is not the Applicant's mother, and did not list any other marriages. This indicates that the father was either never married to the Applicant's mother, or that he was married more than twice but did not disclose the marriage to the Applicant's mother.

Because the Applicant also indicated on his Form N-600 that his mother died, the Director requested him to submit a copy of her death certificate. In response, the Applicant stated that his mother died tragically in 2007, but he did not have her death record because death certificates in Nigeria are usually not issued unless specifically requested at the time of death. We note, however, that according to the U.S. Department of State the death of every person in Nigeria as well as the cause of death must be registered since the enactment of the Nigeria Births, Deaths, etc. (Compulsory Registration) Act No. 69 of 1992, and the person's death certificate may be obtained from the Registrar for the area where such a death occurred.[4]

As the Applicant does not submit his mother's death record on appeal, he has not demonstrated that he met the legal custody presumption applicable to children of surviving natural parents. As such, he has not overcome the Director's adverse determination on the issue of legal custody. And, although not specifically addressed in the Director's decision, inconsistent information in the record about the number of times the Applicant's father was married, and lack of evidence of the parents' marriage and divorce certificates raises questions about the Applicant's claim of having been born in wedlock.[5]

Based on the above, we conclude that the Applicant has not met his burden of proof to establish that he resided in the United States as a lawful permanent resident in the legal custody of his U.S. citizen father. Consequently, he is ineligible for a Certificate of Citizenship, and his Form N-600 remains denied.

**ORDER:** The appeal is dismissed.

[4] *See* U.S. Department of State, *Nigeria Reciprocity Schedule*, https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country/Nigeria.html

[5] If the Applicant was born to unmarried parents, he would have to show that he was legitimated by his father and that he met a separate legal custody presumption applicable to out-of-wedlock children in 8 C.F.R. § 320.1(1)(iii).