U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19393470

Date: FEB. 16, 2022

Appeal of Harlingen, Texas Field Office Decision

Form N-600, Application for a Certificate of Citizenship

The Applicant, who was born abroad, seeks a Certificate of Citizenship to reflect that she derived citizenship from her adoptive U.S. citizen mother under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The Director of the Harlingen, Texas Field Office denied the Form N-600, concluding that the Applicant was ineligible for a Certificate of Citizenship because she did not submit "a full copy of 'Acta de Sentencia' for [her] adoption," as requested.

On appeal, the Applicant submits the requested document with a certified English translation, and reasserts eligibility.

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

I. LAW

The record reflects that the Applicant was born in Mexico in [redacted] 1992 to noncitizen parents. In September 1996 at the age of four years she was adopted there by a naturalized U.S. citizen and her spouse,[1] and her adoptive parents brought her to the United States shortly thereafter. The Applicant's adoptive mother successfully petitioned to classify the Applicant as her child for immigration purposes, and in August 2000 when the Applicant was eight years old her status was adjusted to that of a lawful permanent resident child of a U.S. citizen (IR-7).

Generally, to derive U.S. citizenship a foreign-born child must satisfy certain statutory conditions before turning 18 years of age. A child's acquisition of citizenship on a derivative basis occurs by operation of law and not by adjudication. *Matter of Fuentes-Martinez*, 21 I&N Dec. 893, 896 (BIA 1997). Thus, a child who satisfies requisite conditions will derive U.S. citizenship automatically, even though the actual determination of derivative citizenship may occur long after the fact, in the context of a passport application or a claim to citizenship. *Id.*

[1] The Applicant did not provide information about her adoptive father's citizenship; however, in the adoption decree he is identified as a married person of North American nationality. The record contains the adoptive parents' marriage certificate, which shows that they were married in [redacted] 1996.

To determine whether the Applicant derived U.S. citizenship from her adoptive mother, 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). Here, the last qualifying event was the Applicant's admission to the United States for permanent residence in 2000, when former section 321 of the Act, 8 U.S.C. § 1431, was in effect.[2]

The Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), repealed former section 321 of the Act and amended, in part former section 320 of the Act. The amendments to section 320 of the Act took effect on February 27, 2001, and apply to individuals who satisfy the requirements of section 320 of the Act, as in effect on that date. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 157 (BIA 2001).

Section 320 of the Act, as amended in February 2001 and currently in effect provides 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.
>
> (b) Subsection (a) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

Because the familial relationship between the Applicant and her mother was created by adoption, the Applicant is subject to the provisions of section 320(b) of the Act. The term "adopted child" for derivative citizenship purposes means a person who has been adopted pursuant to a full, final, and complete adoption, and who also meets the requirements of section 101(b)(1)(E) or (F) of the Act, 8 U.S.C. § 1101(b)(1)(E) or (F). 8 C.F.R. § 320.1. Section 101(b)(1) of the Act mandates, in part, that a child must be adopted while under the age of 16 years, and must be in the legal custody of, and reside with the adopting parent or parents for at least two years to derive U.S. citizenship.

[2] We note that former section 321(b) of the Act required an adopted child to be residing in the United States at the time of naturalization of the adoptive parent or parents, and in the custody of the adoptive parent or parents pursuant to a lawful admission for permanent residence. Here, the Applicant's adoptive mother naturalized in 1993, and the Applicant did not begin residing in the United States as a lawful permanent resident until 2000. The Applicant does not claim eligibility for derivative citizenship under former section 321 of the Act, and we will not address it further.

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

The record reflects that the Applicant satisfied several of the conditions in section 320 of the Act as in effect on February 27, 2001. Specifically, at that time the Applicant had at least one U.S. citizen adoptive parent, was under 18 years of age, and was a lawful permanent resident of the United States. The remaining issue, therefore, is whether the Applicant has established that as of February 27, 2001, or thereafter, but before turning 18 years of age in [redacted] 2010 she met the legal and physical custody requirements in section 320(a)(3) of the Act, as well as the specific legal custody and residence conditions in section 320(b) of the Act applicable to adopted children.

We have reviewed the entire record as supplemented on appeal and conclude that the Applicant has met her burden of proof to demonstrate that she satisfied all relevant conditions to derive U.S. citizenship from her adoptive mother.

A. Legal Custody

Legal custody refers to the responsibility for and authority over a child. 8 C.F.R. § 320.1. In the case of an adopted child, legal custody will be presumed based on the existence of a final adoption decree. *Id.*

Here, the preponderance of the evidence is sufficient to establish that the Applicant was residing in the United States in her adoptive mother's legal custody when her status was adjusted to that of a lawful permanent resident in 2000 and thereafter. The record, as supplemented on appeal includes a copy of the final adoption judgment issued to the Applicant's adoptive parents in [redacted] 1996 by a court in [redacted] Mexico, which authorized the adoption and the change of the Applicant's last name to that of her adoptive parents'. The judgment shows that the Applicant's adoption became final in 1996 and that her adoptive mother therefore had legal custody of the Applicant since that time.

The legal custody requirement in section 320(a)(3) of the Act therefore has been met.

B. Physical Custody

The evidence is also sufficient to show that the Applicant was residing in the United States in her adoptive mother's physical custody during the relevant period after she was admitted to the United States for permanent residence and when the amended section 320 of the Act took effect.

While neither the Act nor the regulations define the term "physical custody," U.S. federal courts and the Board of Immigration Appeals considered it in the context of "actual uncontested custody" in derivative citizenship proceedings and interpreted physical custody to mean actual residence with the parent. *See Bagot v. Ashcroft*, 398 F.3d 252, 267 (3d Cir. 2005) (finding that a child was in the parent's "actual physical custody" where the child lived with the parent and no one disputed the parent's custody); *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 his arrangement).

Here, Mexican court documents reflect that the Applicant's adoptive parents resided together in Texas when they adopted the Applicant in [redacted] 1996. A review of the Applicant's underlying adjustment of status application shows that she entered the United States in September 1996, shortly after her adoption was finalized and that she resided in Texas with both her adoptive parents through the date her status was adjusted in 2000. The record also includes a copy of the Applicant's Form I-94, temporary evidence of permanent resident status which was issued to her in July 2001, and which indicated that she continued to reside with her adoptive parents following the adjustment of status and after the amendments of section 320 of the Act took effect in February 2001.

This documentation considered in its totality is sufficient to show that the Applicant satisfied the physical custody requirement under section 320(a)(3) of the Act through actual residence with her adoptive mother in Texas during the relevant period from the time she was granted permanent resident status in 2000 and as of February 27, 2001, when the amendments to section 320 took effect.

C. Legal Custody and Residence Requirements Applicable to Adopted Children

The evidence discussed above is also sufficient to show that the adoptive mother's legal custody was established through the final adoption decree in [redacted] 1996, and that the Applicant resided in the United States with her adoptive mother since at least [redacted] 1996, when she was four years old.[3]

The Applicant therefore met the additional two-year legal custody and residence requirements in sections 320(b) and 101(b)(1) of the Act to qualify as a "child" for the purposes of derivative citizenship under section 320 of the Act.

III. CONCLUSION

The Applicant has met her burden of proof to show to show that she satisfied all relevant derivative citizenship conditions under section 320 of the Act as of February 27, 2001, when that section went into effect. She has therefore established that she derived U.S. citizenship from her adoptive mother and is eligible for a Certificate of Citizenship.

ORDER: The appeal is sustained.

[3] We note that the Applicant was granted adjustment of status in 2000 based on a concurrently filed and approved immigrant visa petition to classify her as her adoptive mother's child under section 201(b) of the Act, 8 U.S.C. § 1151(b), which required the adoptive mother to establish, in part that the Applicant had been in her legal custody and resided with her for at least two years. See section 101(b)(1)(E) of the Act; 8 C.F.R. § 204.2(d)(2)(vii).