U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22359075

Date: SEPT. 19, 2022

Appeal of Hartford, Connecticut Field Office Decision

Form N-600, Application for Certificate of Citizenship

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

The Director of the Hartford, Connecticut Field Office denied the Form N-600, Application for Certificate of Citizenship (Form N-600), concluding that the Applicant had provided insufficient evidence to establish he had resided in the United States in the physical custody of his U.S. citizen parent before turning 18 years of age.

The Applicant indicates on appeal that he has resided in the United States in the legal and physical custody of his U.S. citizen father during the required time period, and submits additional evidence in support of this claim.

Upon *de novo* review, we will remand the matter for proceedings consistent with this decision.

I. LAW

The record reflects that the Applicant was born in Peru in [redacted] 2002 to unmarried foreign national parents. The Applicant's parents subsequently married in [redacted] 2009 and divorced in [redacted] 2013. The Applicant was first admitted into the United States as a lawful permanent resident in June 2012, and last entered the United States as a lawful permanent resident in October 2019, when he was 17 years old. In July 2020, his father was issued a Certificate of Citizenship showing that the father was determined to be a U.S. citizen under section 342 of the Act as of his date of birth in [redacted] 1981. There is no evidence that the Applicant's mother is a U.S. citizen, and the Applicant seeks a Certificate of Citizenship through his U.S. citizen father.

For derivative citizenship purposes, we apply "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 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), applies to the Applicant's derivative citizenship claim, as he not yet born when the CCA was enacted and went into effect on 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.

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 he must be an unmarried person under twenty-one years of age.

Because the Applicant was born abroad, he is presumed to be a foreign national and bears the burden of establishing his claim to U.S. citizenship by a preponderance of credible evidence. *See Matter of Baires,* 24 I&N Dec. 467, 468 (BIA 2008). The "preponderance of the evidence" standard requires that the record demonstrate the Applicant's claim is "probably true," based on the specific facts of his case. *See Matter of Chawathe,* 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-,* 20 I&N Dec. 77, 79-80 (Comm'r 1989)).

II. ANALYSIS

The Applicant initially established that he meets some of the requirements for derivative citizenship under section 320(a) of the Act. For example, U.S. passport evidence and a Certificate of Citizenship in the record show that the Applicant's father was found to be a U.S. citizen as of his date of birth in [redacted] 1981; therefore, the section 320(a)(1) of the Act condition requiring at least one U.S. citizen parent has been satisfied. Moreover, the [redacted] 2013 divorce judgment from the Superior Court of Connecticut (Superior Court) for the Applicant's parents shows that the court awarded shared legal custody of the Applicant to both of his parents, which satisfies the regulatory definition of "legal custody" in the case of a divorce.[1] *See* 8 C.F.R. § 320.1(2) ("the Service will consider a U.S. citizen parent who has been awarded 'joint custody,' to have legal custody of a child.")

In the 2013 divorce judgment, the Superior Court stated that the Applicant's primary residence would be with his (non-U.S. citizen) mother, noting that he already was residing with her in Peru. The divorce judgement also stated that the Applicant's father would have unlimited visitation rights from the father, to be determined by the parents. Because of the language of the court order stating that the Applicant's primary residence would be with his mother, the Director stated that the Applicant had not shown that he had been residing in the physical custody of his father since his re-entry into the United States in

[1] The Applicant also included a 2016 document from Peru declaring that his parents' marriage contract was dissolved; however, it does not appear to be relevant in this case.

October 2019. Consequently, the issues on appeal are whether the Applicant has shown that he resided in the United States in his father's physical custody at some point after on or after the Applicant's admission into the United States as a lawful permanent resident and before he turned 18 years old in [redacted] 2020, for purposes of satisfying the remaining conditions of section 320(a)(3) of the Act.

On appeal, the Applicant indicates that although his parents' 2013 Connecticut divorce judgment reflects that his primary residence was to be with his mother in Peru, his mother subsequently agreed to allow him to reside with his father. The Applicant contends that he has been residing in the physical custody of his U.S. citizen father since the Applicant's last admission into the United States as a lawful permanent resident in 2019. The Applicant includes a March 2022 letter from his mother, who states that she authorizes the Applicant to reside with his father in the United States.

Neither the Act nor the regulations define the term "physical custody." However, "physical custody" has been considered in the context of "actual uncontested custody" in derivative citizenship proceedings and interpreted to mean actual residence with the parent. *See Khalid v. Sessions*, 904 F.3d 129 (2d Cir. 2018) (finding that physical custody was established despite a "brief, temporary separation" from the naturalized parent - due to pretrial juvenile detention - because it was uncontested that the child lived with his naturalized citizen parent prior to his pretrial detention); *Bagot v. Ashcroft,* 398 F.3d 252, 267 (3rd Cir. 2005) (father had actual physical custody of the child where the child lived with him and no one contested the father's custody); *Matter of M-,* 3 I&N Dec. 850, 856 (BIA 1950) (father had "actual uncontested custody" of a child where the father lived with the child, took care of the child, and the mother consented to his custody). Consequently, the fact that the 2013 divorce documents show that the Applicant's mother would continue to have physical custody of the Applicant and noting that he was already residing with her in Peru, does not mean that the Applicant cannot show that, at some point after his parents divorced, he resided in the physical custody of his father through actual residence with his father. Therefore, in order to satisfy the physical custody condition at section 320(a)(3) of the Act, the Director must consider whether the Applicant has shown that his father had actual physical custody of the Applicant through the Applicant's residence with him in the United States, after the Applicant had been admitted to the United States as a lawful permanent resident and while the Applicant remained under the age of 18 years.

In this case, USCIS records show that the Applicant was first admitted to the United States as a lawful permanent resident in June 2012, prior to his parents' divorce in [redacted] 2013. At that time, the Applicant indicated that his permanent address was with his U.S. citizen father in [redacted] Connecticut. Because the legal and physical custody requirements of section 320(a)(3) of the Act can be satisfied at any time prior to the Applicant turning 18 years of age, the Applicant may also show that he resided in the United States in his father's legal and physical custody at some point after admission to the United States as a lawful permanent resident in June 2012 and prior to his parents' 2013 divorce, pursuant to section 320 of the Act conditions that apply to an applicant who is the child of married parents, including one U.S. citizen parent.

Therefore, we withdraw the Director's finding that the 2013 divorce documents of the Applicant's parents preclude the Applicant from showing that he resided in the actual physical custody of his U.S. citizen father after his 2019 admission as a lawful permanent resident and prior to his eighteenth birthday in [redacted] 2020. In the alternative, the Applicant may show that he meets section 320(a)(3) of

the Act physical custody conditions at some point after his admission to the United States as a lawful permanent resident in June 2012 and prior to his parents' [redacted] 2013 divorce.

The Applicant's evidence before the Director and on appeal to show that he was residing in the legal and physical custody of his U.S. citizen father includes his own bi-weekly payroll records beginning in November 2020, and evidence indicating that they had a shared bank account beginning in September 2020, a Connecticut Identification Card issued in 2019, and a February 2020 English-language assessment. Although some of this evidence includes the Applicant's U.S. residence information and relates to the period preceding his eighteenth birthday, the Director's decision does not appear to have considered the probative value of the evidence, as the Director concluded that the Applicant's 2013 divorce judgement precluded him from establishing that his father could have had physical custody of the Applicant. However, as discussed, the 2013 divorce judgment does not prevent the Applicant from showing that he resided in the United States in the actual physical custody of his father, as required under section 320(a)(3) of the Act. Moreover, although the Applicant also may show that he resided in the legal and physical custody of his U.S. citizen parent after his June 2012 admission as a lawful permanent resident when his parents were still married, the Director does not appear to have considered whether or not the record contains evidence that the Applicant satisfied the section 320(a)(3) of the Act legal and physical custody conditions following that 2012 admission.

Consequently, the Applicant may seek to establish his residence in the United States in the actual physical custody of his U.S. citizen father after his parents' 2013 divorce, or alternatively, in his U.S. citizen father's legal and physical custody prior to the divorce, for purposes of section 320(a)(3) of the Act. Therefore, we are returning the matter to the Director: (1) to assess the relevant evidence submitted below in determining whether or not the Applicant satisfies the legal and physical custody requirements of section 320(a)(3) of the Act, as relevant for each period; (2) to determine whether the Applicant meets the definition of a child under section 101(c) of the Act; and (3) for issuance of a new decision on this application for a Certificate of Citizenship under section 320 of the Act. On remand, the Director may request any additional information considered pertinent.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing analysis.