



**U.S. Citizenship
and Immigration
Services**

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

In Re: 29357098

Date: DEC. 15, 2023

Appeal of Los Angeles, California 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 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 Los Angeles, California Field Office denied the application, concluding that the record did not establish that the Applicant was residing in the United States in the legal and physical custody of his U.S. citizen parent at some point on or after the Applicant's admission to the United States as a lawful permanent resident and prior to his 18th birthday, as required to satisfy sections 320(a)(2) and (3) of the Act. 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 Peru in 2004 to unmarried foreign national parents. The Applicant's parents subsequently married in Peru in 2015, his father became a naturalized U.S. citizen in June 2020, and the Applicant was admitted to the United States as a lawful permanent resident in April 2022, while he was still under the age of 18 years. The record does not reflect that the Applicant's mother became a naturalized U.S. citizen; therefore, the Applicant seeks a Certificate of Citizenship solely through his father.

The applicable law for derivative citizenship purposes is "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, Pub. L. No. 106-395, 114 Stat. 1631 (CCA), applies to the Applicant's derivative citizenship claim, as he was born after the effective date of that provision.¹

¹ The CCA, which took effect on February 27, 2001, amended former sections 320 and 322 of the Act, and repealed former section 321 of the Act. The provisions of the CCA are not retroactive, and the amended provisions apply only to individuals, such as the Applicant, who were not yet 18 years old as of 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 that the Applicant’s claim is “probably true,” based on the specific facts of her case. *See Matter of Chawathe*, 25 I&N Dec. at 376.

II. ANALYSIS

The Applicant’s birth certificate shows that he was born in Peru in [] 2004 and establishes the parent-child relationship with his father. A Certificate of Naturalization shows that the father became a naturalized U.S. citizen in June 2020, and the Applicant’s Form I-551 permanent resident card shows that he was admitted to the United States as a lawful permanent resident in April 2022. The issue on appeal is whether the Applicant has demonstrated that he was residing in the United States in the legal and physical custody of his U.S. citizen parent at some point after his April 2022 admission to the United States as a lawful permanent resident and before his 18th birthday in [] 2022, as required by sections 320(a)(2) and (3) of the Act.

On his Form N-600, the Applicant listed the same residential address in [], California for himself and his father. However, initial evidence consisting of his father’s birth certificate and Certificate of Naturalization, the Applicant’s 2004 Peruvian birth certificate, his parents’ 2015 marriage certificate, his father’s 2020 tax transcript and a partial copy of his parents’ 2021 federal U.S. income tax return, predate the relevant period for satisfying the U.S. legal and physical residence conditions at sections 320(a)(3) of the Act that began with the Applicant’s April 2022 admission as a lawful permanent resident. Consequently, the Director denied the Form N-600 because the evidence did not show that the Applicant was residing in the United States in his U.S. citizen father’s legal and physical custody at some point after the Applicant’s admission to the United States as a lawful

permanent resident and prior to turning 18 years of age, as required to satisfy section 320(a)(2) and (3) of the Act conditions.

On appeal, the Applicant submits a complete copy of his father's 2021 federal U.S. income tax return, and states that the incomplete copy was the basis for denial of the Form N-600. Although the Director had noted that the previously provided copy of the 2021 federal U.S income tax return was incomplete, it remains that the 2021 federal U.S. income tax return relates to a period of time prior to the relevant period of [] 2022 to [] 2022, and therefore a complete copy of this document does not overcome the basis for the Director's denial. The Applicant does not submit any other evidence indicating he was residing in the United States in the legal and physical custody of his U.S. citizen parent during the relevant period, such as, for example: his own school, employment, or military records; his U.S. citizen parent's 2022 federal U.S. income tax return with proof of filing; and other documents described in the instructions to the Form N-600 under "What Evidence Must You Submit?".

III. CONCLUSION

On appeal, the Applicant has not provided additional documentation to show that he was residing in the United States in the legal and physical custody of his U.S. citizen parent at some point *after* his April 2022 admission to the United States as a lawful permanent resident and *prior to* his 18th birthday in [] 2022. Therefore, he has not established that he was residing in the United States in the legal and physical custody of his U.S. citizen parent at some point on or after the Applicant's admission to the United States as a lawful permanent resident and prior to his 18th birthday, as required to satisfy sections 320(a)(2) and (3) of the Act. For this reason, the application may not be approved.

ORDER: The appeal is dismissed.