



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

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

In Re: 23690332

Date: FEB. 7, 2023

Appeal of New York City, New York Field Office Decision

Form N-600, Application for a Certificate of Citizenship

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

The Director of the New York City, New York Field Office denied the Form N-600, concluding that the Applicant did not establish he was residing in the United States in his father's legal custody, as required. 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 record reflects that the Applicant was born in the Dominican Republic in 2012 to married noncitizen parents. The parents divorced in 2014. The Applicant was admitted to the United States as a lawful permanent resident in 2016, at the age of four years. His father naturalized as a U.S. citizen in August 2021, when the Applicant was nine years old.

To determine whether the Applicant derived U.S. citizenship from his father 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). Because the Applicant is currently under the age of 18 years, we consider his derivative citizenship claim under section 320 of the Act, as in effect since 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.

(Emphasis added).

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).

## II. ANALYSIS

There is no dispute that the Applicant meets some of the conditions in section 320 of the Act—he is under the age of 18 years, has a U.S. citizen father, and is residing in the United States as a lawful permanent resident. The remaining issue is whether the Applicant has demonstrated that his father has legal custody.

The Director determined that the Applicant did not meet the legal custody condition, because when the parents divorced in the Dominican Republic the court granted custody to his noncitizen mother.

To overcome this determination, the Applicant submits additional evidence, which consists of his father's 2020-2021 federal income tax returns<sup>1</sup> and a document entitled "Authentic Certificate" of the declaration his mother provided before a notary public in the Dominican Republic in June 2022.<sup>2</sup> We have considered this additional evidence, and conclude that the record as a whole remains insufficient to establish that the Applicant's is residing in the United States in his father's legal custody.

The regulation at 8 C.F.R. § 320.1 defines the term "legal custody" in section 320 of the Act as responsibility for and authority over a child. The regulation further provides that if the child's parents are divorced or legally separated, U.S. Citizenship and Immigration Services (USCIS) will find a U.S. citizen parent to have legal custody of a child 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. *See* 8 C.F.R. § 320.1(2).<sup>3</sup>

Here, the 2014 divorce decree issued in the Dominican Republic reflects that the court granted "custody and care" of the Applicant and his sibling to his mother.

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<sup>1</sup> The Applicant does explain how the tax evidence relates to his father's legal custody.

<sup>2</sup> We note that the document is internally inconsistent, as it indicates that the mother appeared before the notary public in *June 2022*, and signed the document before the notary and two witnesses in *May 2022*.

<sup>3</sup> The same regulation states that a parent awarded "joint custody" is also considered to have legal custody of the child. The Applicant does not claim or submit evidence that his parents were granted joint custody.

In the 2022 notarial document, the Applicant's mother states that as the Applicant's legal guardian she agrees "to give total and absolute guardianship and custody" of the Applicant to his father, and that based on this document the father may represent the Applicant before any institutions; enroll him in school, sports, and social activities; file immigration-related documents on the Applicant's behalf and "any other such necessities" that would benefit the Applicant. The mother further declares that she does not object to the Applicant's residence in the United States with his father.

The mother's declaration before the notary public does not comply with the regulation at 8 C.F.R. § 320.1(2), which specifically requires a legal custody grant by a court of law or other appropriate government entity. The Applicant does not provide any evidence to show that his mother's declaration alone is sufficient to modify a judicial custody award under Dominican law. Nor does he submit evidence that a court or any other appropriate government entity in the Dominican Republic modified the 2014 custody order before he immigrated to the United States, or that his father was subsequently granted legal custody by a court or other appropriate government entity under the laws of the state of New York where he and his father have been residing after admission to the United States for permanent residence in 2016.

We acknowledge the previously submitted special power of attorney document his mother executed in 2017, stating that the Applicant's father "is entitled to represent [the Applicant and his sibling] before any institution . . . without [her] intervention" and that she consents to their residence with the father. This document, however, is similarly insufficient to establish the father's legal custody, as it was not issued by a court of law or other appropriate government entity, and there is nothing in the record to indicate that such a document constitutes a legal custody award under the law of the Dominican Republic or the United States.

In view of the above, we conclude that the Applicant has not met his burden of proof to show that he is residing in the United States in his father's legal custody, as required under section 320(a)(3) of the Act. Consequently, the Applicant has not established eligibility for a Certificate of Citizenship and his Form N-600 remains denied.

**ORDER:** The appeal is dismissed.