



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

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

In Re: 24303410

Date: FEB. 21, 2023

Appeal of Philadelphia, Pennsylvania Field Office Decision

Form N-600, Application for a Certificate of Citizenship

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

The Director of the Philadelphia, Pennsylvania Field Office denied the Form N-600, concluding that the record did not establish as required that the Applicant is residing in the United States in the legal and physical custody of her mother, as the evidence indicated the Applicant is residing in Pennsylvania with her grandmother and her mother is residing in Rhode Island. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Applicant's mother submits a letter explaining that she was not aware the Applicant had to reside with her to derive citizenship. She states that although she initially lived in Pennsylvania, she subsequently decided to move to Rhode Island and leave the Applicant under her grandmother's care in Pennsylvania until she finished school. The mother further states that she maintains regular contact with the Applicant, and requests that we reverse the Director's adverse decision.

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.

The record reflects that the Applicant was born abroad in 2009 to unmarried noncitizen parents. In 2016, at the age of seven years the Applicant and her mother were admitted to the United States as lawful permanent residents. The mother naturalized as a U.S. citizen in 2021 when the Applicant was 12 years old.

For derivative citizenship purposes we consider "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 her derivative citizenship claim under section 320 of the Act, as in effect since 2001.

Section 320 of the Act provides, in relevant 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).

Although not defined 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). Here, the Applicant's mother confirms that the Applicant is not residing with her, and the previously provided evidence including the mother's 2020 Rhode Island driver's license and her 2021 Certificate of Naturalization (which reflects that she naturalized in Rhode Island), as well as the Applicant's Pennsylvania school records indicate that the Applicant and her mother live in different states. The Applicant therefore has not demonstrated that she is currently residing in the *physical custody* of her U.S. citizen parent, as required in section 320(a)(3) of the Act. Because the Applicant is ineligible for issuance of a Certificate of Citizenship on that basis alone, we need not address at this time whether she satisfied the *legal custody* requirement under the same section of the Act, and whether she meets the remaining conditions for derivative citizenship.¹

In conclusion, the Applicant has not met her burden of proof to establish that she derived U.S. citizenship from her mother, because she has not demonstrated she is residing in the United States in her U.S. citizen mother's physical custody. The Applicant is therefore ineligible for a Certificate of Citizenship and her Form N-600 remains denied.

ORDER: The appeal is dismissed.

¹ Instead, we reserve those issues. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach").