



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

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

In Re: 23477759

Date: JAN. 19, 2023

Appeal of Houston, Texas 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 mother under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The Director of the Houston, Texas Field Office denied the Form N-600, concluding that the evidence was insufficient to establish the requisite parent-child relationship between the Applicant and her U.S. citizen mother. The matter is now before us on appeal. 8 C.F.R. § 103.3.

On appeal, the Applicant submits a statement with previously provided evidence and reasserts eligibility.

Upon de novo review, we will dismiss the appeal.

I. LAW

The record reflects that the Applicant was born in Nigeria in [] 2009 to noncitizen parents, and her birth was registered there in March 2015. Her mother immigrated to the United States in 2013 and subsequently filed an immigrant visa petition on the Applicant's behalf. In [] 2017, a day before her eighth birthday the Applicant was admitted to the United States for permanent residence as a child of lawful permanent resident based on that petition. The Applicant's mother naturalized as a U.S. citizen in 2019, when the Applicant was nine years old.

In adjudicating the Applicant's derivative citizenship claim, 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, section 320 of the Act as in effect since 2001 governs her derivative citizenship claim. 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.

To be considered a “child” of a U.S. citizen mother for the purposes of section 320 of the Act, the child must be, as relevant here, the U.S. citizen mother’s genetic child. Section 101(c) of the Act, 8 U.S.C. § 1101(c); *see also generally* 12 USCIS Policy Manual H.2(A) (discussing definitions of the term “child” in the context of citizenship and naturalization proceedings).

The regulation at 8 C.F.R. § 320.1 defines the term “legal custody” in section 320(a)(3) of the Act as “responsibility for and authority over a child,” and describes specific scenarios where U.S. Citizenship and Immigration Services (USCIS) will presume that a U.S. citizen parent has legal custody of a child. The regulation further provides that USCIS may also consider other factual circumstances in determining whether the U.S. citizen parent has legal custody for the purposes of derivative citizenship under section 320 of the Act. 8 C.F.R. § 320.1(2).

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

There is no dispute that the Applicant meets some of the derivative citizenship conditions in section 320 of the Act, as she is currently under the age of 18 years and is residing in the United States as a lawful permanent resident. The issue on appeal is whether the Applicant submitted sufficient evidence to establish the requisite claimed biological relationship with the naturalized U.S. citizen through whom she is claiming derivative citizenship, and to show that the U.S. citizen has legal custody.

The Applicant represented on the Form N-600 that she was born out of wedlock and that her parents were never married to each other. The Director noted that the last name of the Applicant’s mother listed on the Applicant’s late-registered birth certificate did not match any of the last names used by the U.S. citizen through whom she was claiming citizenship, and issued a notice of continuance giving the Applicant an opportunity to show that they were the same person. In response, the Applicant submitted marriage and divorce certificates, as well as undated newspaper clippings to show that her mother changed her last name in Nigeria through publication in newspapers on two separate occasions. The Director determined, however, that the newspaper notices were not sufficient as evidence of a legal name change and denied the application, concluding that the Applicant did not meet her burden of proof to establish that she had a U.S. citizen parent from whom she could derive citizenship.

To overcome this determination, the Applicant submits documents her mother previously provided in support of the immigrant visa petition (including newspaper evidence that now shows the publication dates), as well as family photographs. She explains that although her mother was married twice, she

was never married to her father, and the mother's last name was incorrectly recorded in her birth certificate. The Applicant further asserts that the visa petition her mother filed on her behalf was approved based on the same evidence she submitted in these proceedings, that her mother's name is also listed on her school records, and that she has been residing with her mother since her arrival in the United States in 2017.

We have reviewed the entire record, as supplemented on appeal and conclude that it is still insufficient to establish that the Applicant is a genetic child of a U.S. citizen mother who has legal custody over her.

A. Parent-Child Relationship

The only primary documentation of the Applicant's parentage is her late-registered birth certificate. A delayed birth certificate does not have the same weight as a contemporaneous birth record, even when unrebutted by contrary evidence, due to the potential for fraud. *Matter of Bueno-Almonte*, 21 I&N Dec. 1029, 1032-33 (BIA 1997). Such a birth certificate therefore must be evaluated in light of other evidence of record and the circumstances of the case. *Id.*

Here, the Applicant's birth certificate reflects that she was born in 2009 to K-M-¹[] (mother) and O-[] (father). The certificate does not indicate who registered the Applicant's birth and what if any documents were submitted to establish her parentage. The related certificate of origin issued by a local Nigerian government in February 2015, reflects that the Applicant's parents are Mr. and Mrs. []. As evidence that her mother used the last name "[]" the Applicant submitted a 2010 notice in a newspaper that "[f]ormerly Miss [A-] now [is] Mrs. []". The record also contains evidence of the mother's 2011 marriage to S-[] and a 2013 newspaper notice that "[f]ormerly Miss [A-] now [is] Mrs. []"². The Applicant does not explain why the mother indicated that both her name and civil status changed in 2010 if she was never married to the Applicant's father. Nor does the Applicant submit evidence that a notice in a newspaper constitutes a legal name change under Nigerian law. *See e.g., Matter of Kodwo*, 24 I&N Dec. 479, 482 (BIA 2008) (providing that application of the foreign law is a question of fact, which must be proved by the applicant). We acknowledge the Applicant's statement that the mother's last name in the birth certificate was entered in error; however, given the unresolved inconsistencies discussed above the Applicant has not overcome the Director's adverse determination on the issue of the parent-child relationship. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (stating that an individual seeking immigration benefits must resolve inconsistencies in the record with independent, objective evidence pointing to where the truth lies).

B. Legal Custody

Although not specifically addressed in the Director's decision, we note that the evidence is also insufficient to determine whether the Applicant satisfies the legal custody condition in section 320(a)(3) of the Act. As stated, some of the documents indicate that the Applicant's parents may have been married. Specifically, the Applicant's mother listed O-[] as her prior spouse on the

¹ We use initials when possible for privacy.

² We note that the mother is identified as "widow" in the 2011 marriage certificate.

immigrant visa petition she filed on the Applicant's behalf in 2015; the Applicant's certificate of origin identifies her parents as "Mr." and "Mrs." [redacted] and the 2010 newspaper notice points to a change in her mother's civil status from "Miss" to "Mrs. [redacted]" Similarly, the Applicant's 2010 Nigerian health card lists her parents as "Mr." and "Mrs." [redacted] Lastly, the names of both parents are included on the Applicant's 2013-2015 school records, and the 2015 school record specifically identifies "Mr. & Mrs. [redacted]" as the Applicant's guardians.

This evidence, which suggests that the Applicant's parents may have been married, or at the very least shared legal custody over the Applicant in Nigeria, is relevant to a determination whether her mother must satisfy the legal custody presumption in 8 C.F.R. § 320.1 applicable to married as opposed to single (or divorced) parents. Because the Applicant has not addressed this evidence, we are unable to determine if she meets the legal custody requirement in section 320(a)(3) of the Act.

III. CONCLUSION

The Applicant has not provided sufficient evidence to resolve the inconsistent information about her parentage and her parents' marital status. As such she has not met her burden of proof to show the requisite parent-child relationship with her U.S. citizen mother and her mother's legal custody. Consequently, the Applicant has not established that she derived U.S. citizenship from her mother under section 320 of the Act and is ineligible for a Certificate of Citizenship.

ORDER: The appeal is dismissed.