



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

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

In Re: 27275682

Date: June 15, 2023

Appeal of Queens, New York Field Office Decision

Form N-600, Application for Certificate of Citizenship

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

The Director of the Queens, New York Field Office denied the Form N-600, concluding that the evidence was insufficient to establish, as required that the Applicant resided in the legal and physical custody of her father after she was admitted to the United States for lawful permanent residence. The matter is now before us on appeal.

On appeal, the Applicant submits additional evidence and renews her citizenship claim.

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 sustain the appeal.

**I. LAW**

The Applicant was born in the Dominican Republic in  2006 to unmarried noncitizen parents. Her father naturalized as a U.S. citizen in June 2018, when the Applicant was 11 years old, and shortly thereafter filed a Form I-130, Petition for Alien Relative (petition) to classify her as his child for immigration purposes. The petition was approved, and in November 2018 at the age of 12 years the Applicant's status was adjusted to that of a lawful permanent resident. Her parents married in the United States two years later.

In adjudicating the Applicant's 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). The last critical event in this case is the Applicant's admission to the United States for permanent residence. Because the Applicant has not yet reached the statutory 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 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.

The term “child,” as used in section 320 of the Act includes children who were born to unmarried parents and legitimated under the law of the child’s residence or domicile, or under the law of the father’s residence or domicile, whether in the United States or elsewhere, if such legitimation takes place before the child reaches the age of 16 years<sup>1</sup> and the child is in the legal custody of the legitimating parent. Section 101(c)(1) of the Act, 8 U.S.C. § 1101(c)(1).

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 above conditions, as she is under the age of 18 years, has a U.S. citizen father, and was admitted to the United States as a lawful permanent resident. The remaining issues are: (1) whether the Applicant has established that she qualifies as her father’s “child” for the purposes of derivative citizenship under section 320 of the Act and, if so (2) whether she has demonstrated that she is residing in the United States in her father’s legal and physical custody.

We have reviewed the entire record as supplemented on appeal, and conclude that it is sufficient to show that she satisfies both requirements.

### A. The Applicant Qualifies as her Father’s “Child”

Although not specifically addressed in the Director’s decision, a person who like the Applicant was born out of wedlock is considered a “child” for derivative citizenship purposes only if they were legitimated while in the legitimating parent’s legal custody. Thus, to prevail on her citizenship claim the Applicant must first show that she was legitimated either in the Dominican Republic where she

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<sup>1</sup> Because all of the conditions in section 320 of the Act must be satisfied before the child’s 18th birthday, U.S. Citizenship and Immigration Services allows legitimation for the purposes of section 320 of the Act to occur until the age of 18 years. See generally 12 USCIS Policy Manual H.2(B) n. 17, <https://www.uscis.gov/policy-manual>. In addition, a legitimated child is presumed to be in the legal custody of the legitimating parent. See *Matter of Rivers*, 17 I&N Dec. 419, 422 (BIA 1980).

resided prior to immigrating to the United States, or under the law of her father's place of residence in the United States.

Legitimation is the act of putting a child born out of wedlock in the same legal position as a child born in wedlock. *See Matter of Cabrera*, 21 I&N Dec. 589, 591 (BIA 1996). The Board of Immigration Appeals held "that a person born abroad to unmarried parents can be a 'child' for purposes of section 320(a) of the Act if they are otherwise eligible and were born in a country or State that had eliminated legal distinctions between children based on the marital status of their parents or had a residence or domicile in such a country or State (including a State within the United States)." *See Matter of Cross*, 26 I&N Dec. 485, 492 (BIA 2015).

Here, the record includes the Applicant's timely registered birth certificate which reflects that she was born in the Dominican Republic in 2006. A child born out of wedlock in the Dominican Republic is placed in the same legal position as one born in wedlock once the child has been acknowledged by the father in accordance with Dominican law and hence qualifies as a "legitimated" child. *See Matter of Cabrera*, 21 I&N Dec. at 590 (explaining that the Dominican Republic enacted the Code for Protection of Children, which took effect in January 1995, and which provided for equal rights of children born out of wedlock once their parentage was established). Moreover, according to a legal opinion from the Law Library of Congress (LL File No. 2015-011545), pursuant to the current Dominican Code for the System of Protection and Fundamental Rights of Children and Adolescents, the filiation of children may be proved with a birth certificate issued by a civil status official. The Applicant's birth certificate meets these requirements, as it was issued and certified by a local Dominican Ministry of Civil State Registration office, and it identifies both her mother and father. As such, it is sufficient to show that the Applicant's father legitimated her in the Dominican Republic shortly after she was born.<sup>2</sup> The Applicant therefore qualifies as her father's "child" for purposes of derivative citizenship under section 320(a) of the Act.

## B. Legal and Physical Custody Conditions Met

The Applicant has also demonstrated that she meets the legal and physical custody conditions in section 320(a)(3) of the Act.

### 1. Legal Custody

"Legal custody" refers to the responsibility for and authority over a child. 8 C.F.R. § 320.1. U.S. Citizenship and Immigration Services will presume, in relevant part that a U.S. citizen parent has legal custody of a child, absent evidence to the contrary in the case of a biological child who currently resides with both natural parents (who are married to each other, living in marital union, and not separated). 8 C.F.R. § 320.1(1)(i).

The evidence is sufficient to show that the Applicant meets the above legal custody presumption. Specifically, although the Applicant was born out of wedlock, her parents married in   2020 when she was 13 years old, and there is nothing in the record to suggest that they divorced or separated.

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<sup>2</sup> Consequently, we need not address whether the Applicant may have been also legitimated under the law of her father's residence in the United States.

The record also contains various documents, including the previously provided parents' 2020-2022 residential lease agreements, which indicate that they have been residing together since at least November 2020, and that the Applicant has been residing with them. On appeal, the Applicant also submits her school records, which identify her father as her parent and guardian, and reflect that she and her parents have been living at the same address in New York since 2020.

As this evidence shows that the Applicant has been residing in the United States with both her parents since at least 2020, the legal custody presumption in 8 C.F.R. § 320.1(1)(i) has been met. We conclude therefore that the Applicant meets the *legal custody* requirement in section 320(a)(3) of the Act.

## 2. Physical Custody

The same evidence is also sufficient to establish that the Applicant satisfies the physical custody condition in section 320(a)(3) of the Act.

Although not defined in the Act 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). As discussed, the information in the lease and school documents indicates that the Applicant has been residing in New York as a lawful permanent resident with her U.S. citizen father since 2020.

The Applicant therefore has demonstrated she also meets the *physical custody* condition under section 320(a)(3) of the Act.

## III. CONCLUSION

The Applicant has met her burden of proof to establish that she met all relevant conditions to derive U.S. citizenship from her father under section 320 of the Act. She is therefore eligible for issuance of a Certificate of Citizenship.

**ORDER:** The appeal is sustained.