U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25501144

Date: MARCH 20, 2023

Appeal of Houston, Texas Field Office Decision

Form N-600, Application for Certificate of Citizenship

The Applicant seeks a Certificate of Citizenship to reflect that she derived citizenship from her father under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431. To derive U.S. citizenship under section 320 of the Act, an individual born abroad must fulfill all conditions therein before turning 18 years of age.

The Director of the Houston, Texas Field Office denied the Form N-600, concluding that the Applicant did not establish as required she was residing in the United States in her father's legal and physical custody before she turned 18 years old. 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 dismiss the appeal.

I. LAW

The record reflects that the Applicant was born in Honduras in [redacted] 1989 to unmarried noncitizen parents. Her father naturalized as a U.S. citizen in 1995, and subsequently filed an immigrant visa petition to classify the Applicant as his child for immigration purposes. The petition was approved, and in March 2001 at the age of 12 years the Applicant was admitted to the United States as a lawful permanent resident.

To determine whether the Applicant derived U.S. citizenship from her father,[1] 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 in March 2001, when she was 12 years of age. Accordingly,

[1] The Applicant's mother immigrated to the United States in 2012 when the Applicant was 22 years old, and there is no evidence that she is or ever was a U.S. citizen. The Applicant is claiming derivative citizenship solely through her father.

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

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[2] 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). Under the preponderance of the evidence standard, the Applicant must show that her citizenship claim is "probably true," or "more likely than not." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The issue on appeal is whether the Applicant has met her burden of proof to show that she resided in her U.S. citizen's father legal and physical custody in the United States during the relevant period after she was admitted to the United States as a lawful permanent resident in March 2001 and before she turned 18 years old in September 2007 and, if so whether she met the remaining conditions for derivative citizenship under section 320 of the Act.

The Director issued a request for evidence, asking the Applicant to submit documentation indicating that she and her father resided together at the same address, including deeds, mortgages, or leases showing residence; bills, mail, or government correspondence for either person listing a residential address; school registration records listing the mailing address, primary contact, and custodial parent; or other relevant documentation.

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[2] 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).

In response, the Applicant submitted her birth certificate and two letters from individuals who identified themselves as her sisters and indicated she lived with their father and mother (who is not the Applicant's biological mother) in New York since March 2001. The Director determined that although the Applicant established she was her father's biological child, the two letters[3] from her relatives were insufficient to show that she satisfied the legal and physical custody conditions to derive citizenship from her father.

To overcome this determination, the Applicant submits a personal statement, her biological mother's declaration concerning the father's custody, and a school record. We have reviewed the record of proceedings as supplemented on appeal, and conclude that it remains insufficient to establish that the Applicant resided in her father's legal and physical custody in the United States as a lawful permanent resident during the relevant period prior to her 18th birthday.

"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 born out of wedlock who has been legitimated and currently resides with the natural parent. 8 C.F.R. § 320.1(1)(iii).

Thus, to determine whether the Applicant meets the above legal custody presumption, we must first ascertain whether she qualifies as her father's legitimated "child" defined in section 101(c)(1) of the Act. Although not specifically addressed in the Director's decision, the preponderance of the evidence indicates that the Applicant was legitimated by her father in Honduras.

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 Applicant was born in Honduras in 1989. The Honduran constitution, effective December 21, 1957, eliminated all statutory distinctions between legitimate, legitimated, and natural children and accorded all children the same rights and duties of children born in wedlock. *Matter of Sanchez*, 16 I&N Dec. 671, 672 (BIA 1979). Furthermore, both parents are identified in the extract of the Applicant's timely registered birth certificate, and there is no dispute concerning the requisite biological parent-child relationship between the Applicant and her father. Consequently, as the Applicant was born in a country that had eliminated legal distinctions between children based on the marital status of their parents, she qualifies as her father's "child" for purposes of section 320(a) of the Act.

[3] Although the Director referred to those letters as "affidavits" in the denial, we note that the statements therein were not made under oath, nor were the letters accompanied by proof of the writers' identities. *See* 8 C.F.R. § 103.2(b)(2)(i) (providing that affidavits must be sworn to or affirmed by persons who are not parties to the application who have direct personal knowledge of the event and circumstances).

Nevertheless, the evidence considered in the aggregate is not sufficient to show that the Applicant resided with her father. As stated, the Director determined that the letters alone did not establish that the Applicant lived with her father, and we agree. Specifically, although it appears that the writers and the Applicant are related through the father, neither writer provides detailed information about the relationship. Furthermore, their statements are not supported by any primary evidence, including residential, tax, and financial records or other documentation to show that the Applicant and her father lived at the same address during the relevant period. The Applicant's school records and her mother's declaration submitted on appeal are similarly inadequate. The school record, which lists the Applicant's Honduran address, reflects that she attended a public school in New York from July 2001 until mid-September 2004, and that during this time she lived at two different addresses in New York. The school record includes, in the Adult Profile section, the names of the Applicant's father and another individual (whom the Applicant identifies as her paternal aunt), but it does not specify their address or addresses. Thus, while the school record indicates that from July 2001 until September 2004 the Applicant lived in New York, it is not sufficient to show that she lived there with her father. We recognize the 2022 sworn declaration from the Applicant's mother, who states that she gave the Applicant's father full custody of the Applicant because she was in Honduras until 2012. However, as the mother does not provide information about the Applicant's living arrangements in the United States, her testimony has little probative value in establishing the Applicant's claimed residence with her father. Notably, the Applicant did not provide any statements from her father, and she did not include information about his current address and marital history, although she was required to do so.[4]

We acknowledge the Applicant's claim that due to the passage of time and the fact that she now lives outside of New York , it is difficult for her to obtain documents listing the same address for her and her father. However, the burden of proof in these proceedings ultimately rests with the Applicant.

The Applicant has not met this burden because she has not shown by a preponderance of the evidence that she resided in the United States with her father as a lawful permanent resident before she turned 18 years of age. As such, she has not demonstrated that she met the legal custody requirement in section 320(a)(3) of the Act, as explained in 8 C.F.R. § 320.1(1)(iii). Because the Applicant is ineligible for a Certificate of Citizenship on that basis alone, we need not address at this time whether she meets the remaining requirements for derivative citizenship, including residence in her father's physical custody.[5] Her Form N-600 remains denied.

ORDER: The appeal is dismissed.

[4] *See* 8 CFR § 103.2(a) (stating that every form, benefit request, or other document must be submitted and executed in accordance with the form instructions); *Instructions for Form N-600*, page 6, https://www.uscis.gov/n-600 (stating that an applicant claiming U.S. citizenship through a U.S. citizen biological father must provide information about the father's address and marital history).

[5] Instead we reserve those issues. Our reservation of the issues does not mean that the Applicant meets the remaining requirements for derivative citizenship and should not be interpreted as such. Rather, as the Applicant has not demonstrated she met the legal custody requirement, addressing whether she met other conditions for derivative citizenship would serve no purpose because it would not change the outcome.