U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29667295

Date: JAN. 5, 2024

Appeal of Brooklyn, 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 Brooklyn, New York Field Office denied the Form N-600, concluding that the Applicant did not provide sufficient documentation to establish that she was residing in the United States in her father's legal and physical custody. On appeal, the Applicant submits additional evidence concerning her and her parents' residence in the United States.[1]

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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

The record reflects that the Applicant was born abroad in [redacted] 2009 to unmarried noncitizen parents. Her father naturalized as a U.S. citizen in November 2013, when the Applicant was four years old. In 2014, he married the Applicant's mother and successfully petitioned for her and the Applicant to immigrate to the United States. The Applicant was admitted to the United States with her mother as a lawful permanent child of a U.S. citizen (IR-2) in late April 2017, at the age of seven years. In 2022, she filed the instant Form N-600, indicating that as of the date of filing she was residing in New York with her parents.

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). The Applicant is currently under the age of 18 years, and the last critical event was her lawful admission to the Unites States for permanent residence in 2017. We therefore consider the Applicant's derivative citizenship under section 320 of the Act, as in effect since 2001.

[1] The Applicant is a minor; her mother filed the instant Form I-290B, Notice of Appeal or Motion.

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).

II. ANALYSIS

There is no dispute that the Applicant has met some of the above conditions, as she is currently 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 demonstrated that she is residing in the United States in her father's legal and physical custody and (2) if she qualifies as her father's "child" for the purposes of derivative citizenship under section 320 of the Act.

In support of her Form N-600 and response to the Director's subsequent notice of continuance, the Applicant submitted birth, marriage, and divorce certificates; utility bills listing her parents' residential address and correspondence mailed to her at that address; and a copy of the lease agreement her parents signed in 2021. In denying the Form N-600, the Director stated generally that this evidence was not sufficient to establish that the Applicant was living in the legal and physical custody of her U.S. citizen father.[3]

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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).

[3] The Director did not explain the specific reasons underlying this determination. *See* 8 C.F.R. § 103.3(a)(1)(i) (providing, in relevant part, that when a U.S. Citizenship and Immigration Services (USCIS) officer denies an application, the officer must explain in writing the specific reasons for denial).

On appeal, the Applicant submits additional documents, including 2023 utility bills addressed to her parents, a copy of the parents' 2023 lease renewal, a 2021 financial contract for medical treatment listing the Applicant as a patient and her parents' address, a school record confirming her registration at a New York public school in 2021, and family photographs.

We have reviewed the entire record as supplemented on appeal, and conclude that the Applicant has met her burden of proof to show that she is residing in the United States in the legal and physical custody of her U.S. citizen father. We will therefore return the matter to the Director to determine in the first instance if the Applicant qualifies as her father's legitimated "child" for derivative citizenship purposes.

A. Physical Custody

Although not defined in the statute and corresponding regulations, the Board of Immigration Appeals has interpreted the term "physical custody" 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).[4]

Here, the evidence considered in the aggregate is sufficient to show that the Applicant is residing in the United States with her mother and father. The lease agreements and utility bills establish that the parents have been residing at the address listed on the Form N-600 since 2021 and that they continue to live there. Furthermore, the same address is listed on the Applicant's 2021 school registration form, on which her father is identified as her parent and legal guardian residing at that address. Similarly, the information in the financial contract related to the Applicant's orthodontic treatment indicates that as of April 2021 she lived with her parents. Lastly, correspondence from a New York health insurance company concerning a change in coverage was mailed to the Applicant at her parents' address, which further shows that she is residing in New York with her parents. These documents, when considered cumulatively, are adequate to show that the Applicant has been residing with her father and mother as a lawful permanent resident since at least 2021, and that she continues to reside with them at this time. The Applicant has therefore met her burden of proof to demonstrate that she satisfies the physical custody requirement of section 320(a)(3) of the Act.

B. Legal Custody

The same evidence is also sufficient to show that the Applicant has been residing in the legal custody of her father after she was admitted to the United States for permanent residence in 2017 and thereafter.

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." That regulation further provides that USCIS will presume that a U.S. citizen parent has legal custody of a child, and will recognize that U.S. citizen parent as having lawful authority over the child, absent evidence to the contrary, in the case of a

[4] We note that in the jurisdiction of the U.S. Court of Appeals for the Second Circuit. where these proceedings arise, a brief and temporary separation of the parent and child does not preclude a finding that the parent has physical custody of the child. *See Khalid v. Sessions*, 904 F.3d 129, 141 (2d Cir. 2018) (holding that a brief, temporary separation created by the child's pretrial juvenile detention did not prevent the child from satisfying the physical custody requirement).

biological child who resides with both natural parents who are married to each other, living in marital union, and not separated. 8 C.F.R. § 320.1(i).

As stated, the Applicant's parents married in Guyana in 2014, as reflected in their marriage certificate.[5] The Applicant represented on her Form N-600 that her parents continue to be married to each other, and there is nothing in the record to indicate that they are separated. The lease agreements and medical, school, and other records discussed above also tend to show that the Applicant is currently residing with her parents at the same address in New York. We find this evidence adequate to demonstrate that the Applicant is residing in the United States with her U.S. citizen father and her mother, who are married to each other and living in marital union. The Applicant's father therefore meets the legal custody presumption in 8 C.F.R. § 320.1(i) for purposes of derivative citizenship.

In conclusion, the Applicant has established by a preponderance of the evidence that she is residing in the United States as a lawful permanent resident in the legal and physical custody of her U.S. citizen father. Consequently, as the Applicant has overcome the sole reason for the denial of her Form N-600, we will return the matter to the Director to determine in the first instance if the Applicant qualifies as her father's "child" for purposes of derivative citizenship under section 320 of the Act, and to enter a new decision, accordingly.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

[5] The Applicant previously provided evidence that in 2013 her father and his first spouse were divorced in Guyana.