



U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: **AUG 06 2013**

Office: EL PASO, TX

IN RE:

APPLICATION: Application for Certificate of Citizenship under section 320 of the Immigration and Nationality Act; 8 U.S.C. § 1431

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Form N-600, Application for Certificate of Citizenship (Form N-600) was denied by the Field Office Director (director), El Paso, Texas, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Mexico on October 22, 1995. On January 15, 2002, the applicant was admitted into the United States as a lawful permanent resident. The applicant's mother is a lawful permanent resident and the applicant was adopted by her U.S. citizen stepfather on September 30, 2011.<sup>1</sup> The applicant seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, on the basis that she derived U.S. citizenship through her adoptive father.

In a decision dated December 13, 2012, the director determined that the applicant had failed to establish that she resided in the legal custody of a U.S. citizen parent for two years prior to the filing and adjudication of her Form N-600 application. The application was denied accordingly.

On appeal, the applicant asserts that she has resided with her adoptive father since 1997; that she met the definition of a stepchild when she became a lawful permanent resident in 2002; and that, although she does not meet section 320 of the Act legal custody requirements, she meets the requirements for citizenship under the Child Citizenship Act of 2001. The applicant submits no new legal or documentary evidence to support her assertions.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d. Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

Former section 320 of the Act was amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (CCA), and took effect on February 27, 2001. The CCA benefits all persons who did not reach their eighteenth birthday as of February 27, 2001. The applicant was five years old on February 27, 2001. Because the applicant was not yet 18 on the February 27, 2001 effective date of the CCA, section 320 of the Act provisions apply to her citizenship claim. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 156 (BIA 2001) (en banc).

Section 320 of the Act provides 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.

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<sup>1</sup> The record contains a partial copy of the applicant's adoption order. Although the applicant's adoption is referred to in the Order, the adoption order in the record is missing pages reflecting the actual order for adoption of the applicant. For purposes of this decision, the AAO will analyze the applicant's citizenship claim based on the premise that the adoption was ordered on September 30, 2011.

- (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.
- (b) Subsection (a) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

Section 101(b)(1)(E) of the Act, 8 U.S.C. § 1101(b)(1)(E) provides, in pertinent part, that the term "child" means an unmarried person under twenty-one years of age who is:

[A] child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years[.]

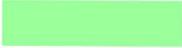
Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33), provides that, "[t]he term 'residence' means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent." The two-year residence requirement set forth in section 101(b)(1)(E) of the Act may be satisfied either before or after an adoption. *Matter of Repuyan*, 19 I&N Dec. 119, 120 (BIA 1984). However, legal custody vests over an adopted child by virtue of a court decree. *Matter of Harris*, 15 I&N Dec. 39, 41 (BIA 1970).

In the present matter, the applicant has failed to demonstrate that she was in her U.S. citizen adoptive parent's legal custody for at least two years prior to the filing of her Form N-600, or the adjudication of the application. The adoption order contained in the record indicates that the applicant was adopted on September 30, 2011. The applicant filed her Form N-600 application about a year later, on October 11, 2012, and a decision was made on her application on December 13, 2012. Because the applicant does not meet the two year legal custody requirements contained in section 320(a)(3) of the Act, she does not qualify for U.S. citizenship under section 320 of the Act.

It is noted that the applicant also does not qualify for citizenship under section 301(g) of the Act, 8 U.S.C. § 1401(g), which states in pertinent part that the following shall be nationals and citizens of the United States at birth:

- (g) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years . . . .

The statutory language contained in section 301 of the Act, "[r]equires that the child be born of a United States citizen. There is no indication that this section applies to an adopted child." *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 155 (BIA 2001).



The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. The applicant has not met this burden. The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.