



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

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

MATTER OF G-A-M-

DATE: DEC. 30, 2015

**CERTIFICATION OF NEWARK FIELD OFFICE DECISION**

**APPLICATION: FORM N-600, APPLICATION FOR CERTIFICATE OF CITIZENSHIP**

The Applicant, a native of Colombia, seeks a Certificate of Citizenship. *See* Immigration and Nationality Act (the Act) § 320, 8 U.S.C. § 1431. The Field Office Director, Newark, New Jersey, denied the application. We remanded the subsequent appeal to the Director. The matter is now before us on certification. The initial decision of the Director will be affirmed, and the application will be denied.

The record reflects that the Applicant was born on [REDACTED] in Colombia. The Applicant was born out of wedlock. The Applicant was admitted to the United States as conditional permanent resident on March 31, 2001, when he was [REDACTED] years old. The record further reflects that the Applicant departed the United States on January 16, 2002, and reentered the United States without inspection on February 12, 2010. The Applicant's mother became a U.S. citizen upon her naturalization on March 18, 2005, when the Applicant was [REDACTED] years old. The Applicant seeks a certificate of citizenship indicating that he acquired U.S. citizenship through his mother pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, as amended by the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000).

In a February 11, 2013, decision, the Director determined that the Applicant did not timely remove the conditions on his permanent residency and was therefore not residing in the United States pursuant to a lawful admission for permanent residence, as required by section 320(a)(3) of the Act, 8 U.S.C. § 1431(a)(3). The Form N-600, Application for Certificate of Citizenship, was denied accordingly.

On appeal, we found that the Applicant was admitted to the United States as a conditional permanent resident on March 31, 2001. Pursuant to the regulation at 8 C.F.R. § 216.4(a)(2), the Applicant was not required to file a separate Form I-751, Petition to Remove the Conditions of Residence, as a dependent child to remove the conditions on his residence. Thus, we further found the Applicant obtained lawful permanent residence as his mother's dependent child. The Director's decision to deny the Form N-600 was therefore withdrawn.

We also found that, in order for the Applicant to qualify for derivative citizenship pursuant to section 320 of the Act, he was required to be in the legal and physical custody of his mother between the time she became a naturalized U.S. citizen on March 18, 2005, and the date that the Applicant turned

*Matter of G-A-M*

█ years of age, on July 13, 2005. Therefore, we remanded the matter to the Director to determine whether the Applicant was in his mother's legal and physical custody between March 18, 2005, and July 13, 2005.

After issuing a request for evidence, and receiving the response, the Director determined in a March 11, 2015, decision that the Applicant did not establish that he was in the physical custody of his mother at the time his mother became a naturalized U.S. citizen before his 18th birthday pursuant to a lawful admission as a permanent resident, as required by section 320(a)(3) of the Act. The Director denied the Form N-600 accordingly, and certified the matter to us for review.

We conduct 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 this decision.

Because the Applicant was born abroad, he is presumed to be a foreign national and bears the burden of establishing his claim to U.S. citizenship by a preponderance of credible evidence. See *Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008). The "preponderance of the evidence" standard requires that the record demonstrate that the Applicant's claim is "probably true," based on the specific facts of each case. See *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)).

The applicable law for derivative citizenship purposes is "the law in effect at the time the critical events giving rise to eligibility occurred." See *Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005). Section 320 of the Act, 8 U.S.C. § 1431, as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (CCA), applies to this case because the Applicant was not yet 18 years old as of the February 27, 2001 effective date of the CCA. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 156 (BIA 2001) (en banc).

Section 320(a) of the Act, 8 U.S.C. § 1431(a), provides:

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.

As discussed in our decision on appeal, the Applicant became a lawful permanent resident as his mother's dependent child. However, the Applicant has not shown that he was residing in the United States during the relevant time period as required by section 320(a)(3) of the Act. The record, including a statement from the Applicant's mother, reflects that the Applicant departed from the

*Matter of G-A-M-*

United States in January 2002 and re-entered, without inspection, in February 2010. In addition, the Applicant indicated that he was residing in Colombia during the time period of March 18, 2005, when his mother became a naturalized U.S. citizen, and [REDACTED] when he turned [REDACTED] years of age. Evidence of record supports this, as the Applicant submitted a letter from the [REDACTED] in Colombia stating that he was in their institution from August 13, 2004, until November 13, 2005.

The record therefore establishes that the Applicant was not present in the United States, much less residing in the physical custody of his mother pursuant to a lawful admission for permanent residence, between the date his mother became a naturalized U.S. citizen and the date he turned 18 years of age. As such, the Applicant does not qualify for derivative citizenship under section 320 of the Act, and the application is therefore denied.

It is the Applicant's burden to establish the claimed citizenship by a preponderance of the evidence. Section 341(a) of the Act, 8 U.S.C. § 1452(a); 8 C.F.R. § 341.2(c). Here, that burden has not been met.

**ORDER:** The initial decision of the Director is affirmed, and the application is denied.

Cite as *Matter of G-A-M-*, ID# 13750 (AAO Dec. 30, 2015)