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

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

MATTER OF A-V-L-

DATE: FEB. 17, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Applicant, a native and citizen of the Dominican Republic, seeks a Certificate of Citizenship. *See* Immigration and Nationality Act (the Act) § 320, 8 U.S.C. § 1431. The Director, Helena Field Office, denied the application. We dismissed the Applicant's appeal. The matter is now before us on a motion to reconsider. The motion to reconsider will be granted and the appeal will be sustained.

The record reflects that the Applicant was born on [REDACTED] in the Dominican Republic. The Applicant's parents were married when the Applicant was born, but later divorced on [REDACTED] 2002. The Applicant's biological father is not a U.S. citizen. The Applicant was admitted to the United States as a lawful permanent resident on August 23, 2011. The Applicant's mother became a U.S. citizen through naturalization on August 29, 2013. The Applicant seeks a certificate of citizenship indicating that he derived U.S. citizenship from his mother pursuant to section 320 of the Act.

On July 24, 2014, the Director denied the application finding that the Applicant did not establish that he fulfilled the requirements for derivative citizenship under section 320 of the Act. Specifically, the Director determined that the English translation of the document regarding the custody arrangement between the Applicant's parents, Authorization of Guardianship Brought Before the Notary Public (authorization of guardianship), without a copy of the untranslated, original document, was insufficient to show that the Applicant resided in the United States in his mother's legal and physical custody.

On appeal, the Applicant submitted the original authorization of guardianship document in Spanish. However, on May 20, 2015, we dismissed the appeal, finding that although the Applicant had overcome the reason for the Director's denial with regard to the issue of legal custody, the Applicant did not establish that he resided in his U.S. citizen mother's physical custody pursuant to a lawful admission to the United States for permanent residence as required under section 320 of the Act.

The evidence of the record includes, but is not limited to: the Applicant's birth certificate, the naturalization certificates of the Applicant's mother and step-father, marriage and divorce certificates of the Applicant's parents, the authorization of guardianship document, tax documents, and the Applicant's school and medical records.

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We review these proceedings de novo. The entire record was reviewed and considered in rendering a decision on the motion.

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 his 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). The Applicant was born on [REDACTED]. Accordingly, section 320 of the Act, as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (CCA), applies to his case.

Section 320 of the Act provides, in pertinent part:

- (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 record reflects that the Applicant has satisfied several of the requirements of section 320 of the Act for derivative citizenship. The Applicant’s mother is a naturalized U.S. citizen, as shown by a copy of her naturalization certificate. Further, the Applicant has established that he was lawfully admitted to the United States for permanent residence as the record indicates the Applicant was admitted to the United States as an immigrant step-child of a U.S. citizen on August 23, 2011. Thus, the Applicant has satisfied the requirement of lawful admission for permanent residence of section 320(a)(3) of the Act. The Applicant’s admission to the United States for permanent residence, as well as the naturalization of his mother occurred while the Applicant was under the age of 18. Accordingly, the Applicant has also satisfied the age limit requirement set forth in section 320(a)(2) of the Act.

In order to derive U.S. citizenship from his mother, the Applicant must further show, as required in section 320(a)(3) of the Act, that he was residing in his mother's legal and physical custody pursuant to a lawful admission to the United States for permanent residence.

On appeal, we concluded the Applicant had satisfied this requirement with respect to residence in his U.S. citizen mother's legal custody. As there is nothing in the record indicating this conclusion is incorrect, we affirm on motion that the Applicant has met this requirement.

The only issue remaining is whether the Applicant has also established that he was residing in his U.S. citizen mother's physical custody pursuant to a lawful admission to the United States for permanent residence as required in section 320(a)(3) of the Act.

Neither the Act nor the regulations define the term "physical custody." However, "physical custody" has been considered in the context of "actual uncontested custody" in derivative citizenship proceedings and interpreted to mean actual residence with the parent. *See Bagot v. Ashcroft*, 398 F.3d 252, 267 (3rd Cir. 2005) (father had actual physical custody of the child where the child lived with him and no one contested the father's custody); *See Matter of M-*, *supra* (father had "actual uncontested custody" of a child where the father lived with the child, took care of the child, and the mother consented to his custody).

We find that the Applicant has submitted sufficient additional material to show that he was residing in the physical custody of his U.S. citizen mother. The record includes an affidavit by the Applicant's mother, who states that the Applicant has lived in her physical custody and under her guardianship since his admission to the United States for permanent residence in 2011. In addition, the Applicant submits on motion his mother's Forms 1040, U.S. Individual Income Tax returns, showing that his mother claimed him as a dependent household member for tax purposes between 2011 and 2014. Moreover, the Applicant's 2013 to 2015 school and medical records show that the Applicant's reported residential address was the same as his mother's address listed on the tax forms, and that the Applicant's mother was referenced as his guardian on these documents. The documents the Applicant submits on motion demonstrate by a preponderance of evidence that he has been residing with his mother since he was lawfully admitted the United States as a permanent resident in 2011. Accordingly, we find that the Applicant has satisfied the requirement of residence in the United States in the physical custody of his U.S. citizen in section 320(a)(3) of the Act.

Therefore, we conclude the Applicant has demonstrated that he meets all the requirements for citizenship under section 320 of the Act.

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 been met.

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ORDER: The motion to reconsider is granted and the appeal is sustained.

Cite as *Matter of A-V-L-*, ID# 15162 (AAO Feb. 17, 2016)