



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

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

MATTER OF L-M-M-C-

DATE: JAN. 8, 2016

APPEAL OF KENDALL FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Cuba, seeks a Certificate of Citizenship. *See* Immigration and Nationality Act (the Act) § 320, 8 U.S.C. § 1431. The Director, Kendall Field Office, denied the application. The matter is now before us on appeal. The appeal will be sustained.

The record reflects that the Applicant was born on [REDACTED] in Cuba. The Applicant's parents were married on [REDACTED] 1997, and divorced on [REDACTED] 2003. The Applicant's mother became a U.S. citizen upon her naturalization on February 14, 2014. The Applicant's father is not a U.S. citizen. The Applicant became a lawful permanent resident on January 18, 2014. The Applicant seeks a certificate of citizenship indicating that she derived U.S. citizenship from her mother pursuant to section 320 of the Act.

On April 4, 2015, the Director denied the application finding that the Applicant did not establish that she fulfilled the requirements for derivative citizenship under section 320 of the Act. Specifically, the Director concluded that the documents submitted, which included an English translation of Certificate of Sentence of Divorce of the Applicant's parents without a copy of the untranslated, original divorce document, were insufficient to show that the Applicant's parents were divorced, or that the Applicant resided in her mother's legal and physical custody. The Applicant's Form N-600, Application for Certificate of Citizenship, was denied accordingly.

On appeal, the Applicant submits a copy of a divorce decree, in Spanish, issued on [REDACTED] 2003, in the [REDACTED] Cuba, as evidence of her parents' divorce and determination of legal and physical custody. The divorce decree indicates that the Court placed the Applicant under the care of her mother, and provided for shared custody of the Applicant by both parents.

The record includes, but is not limited to: the Applicant's birth certificate, the naturalization certificate of the Applicant's mother, the divorce decree of the Applicant's parents, tax documents, bank statements, public assistance benefits statements, state identification documents of the Applicant and her mother, and the Applicant's school records. All evidence was reviewed and considered in rendering this decision.

We review these proceedings de novo. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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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 (9<sup>th</sup> 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 her 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 was admitted to the United States as a permanent resident on January 18, 2014, when she was [REDACTED] years old. Her mother subsequently became a U.S. citizen on February 14, 2014. As the Applicant was born in [REDACTED] both events occurred while the Applicant was under the age of 18. Therefore, the Applicant satisfies the first and the second requirement for derivative citizenship under section 320 of the Act.

In order to satisfy the third requirement set forth in section 320 of the Act, the Applicant must establish that she was lawfully admitted to the United States for permanent residence, and that she was residing in the United States in her mother’s physical and legal custody.

We find that the Applicant has satisfied the requirement of being lawfully admitted to the United States for permanent residence under section 320(a)(3) of the Act. The term “lawfully” denotes compliance with substantive legal requirements, not mere procedural regularity. *Matter of Longstaff*, 716 F.2d 1439, 1441 (5<sup>th</sup> Cir. 1983). To be “lawfully admitted for permanent residence” an alien must have complied with the substantive legal requirements in place at the time she was admitted for permanent residence. *De La Rosa v. U.S. Dep’t of Homeland Sec.*, 489 F.3d 551, 554 (2<sup>nd</sup> Cir. 2007). The Applicant’s status was adjusted on January 18, 2014, under section 1 of the Cuban Adjustment Act of November 2, 1966 (P.L. 89-732). Her permanent residence was recorded as of August 13, 2012, the date she was paroled into the United States, in accordance with the provisions of section 1 of CAA. A review of the record indicates that the Applicant complied with all the legal and procedural requirements for adjustment of status under Cuban Adjustment Act at the time she was accorded such status. We conclude, therefore, that the Applicant has been lawfully admitted to the United States for permanent residence as required under section 320(a)(3) of the Act.

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The Applicant must further show that she has resided in her mother's legal and physical custody pursuant to lawful admission to the United States for permanent residence. 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); *Matter of M-*, 3 I&N Dec. 850, 856 (BIA 1950) (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 demonstrated that she was residing in the physical custody of her U.S. citizen mother. The evidence of the record, including the information provided by the Applicant in connection with her Form I-485, Application to Register Permanent Residence or Adjust Status, shows that the Applicant has been living with her mother since she was paroled into the United States on August 13, 2012. The Applicant's Florida Identification Card, issued on July 9, 2013, shows the same residential address for the Applicant as is listed on her mother's Florida Driver's License issued on February 16, 2010. Further, the Applicant's bank statement issued on January 4, 2014, lists her mother as a joint owner of the account and is addressed to the Applicant and her mother at the same address. Similarly, the Applicant's reported residence on her school documents issued between 2014 and 2015 is the same as her mother's. In addition, the Applicant's mother's 2013 and 2014 federal income tax returns show that the Applicant's mother claimed her as a dependent child for tax purposes. Finally, the Department of Children and Families Florida Access Program public benefits summary documents show that the Applicant's mother reported her as a household member between March 1, 2014, and present. The documents submitted show by a preponderance of evidence that the Applicant has been residing with her mother since her arrival in the United States in August of 2012. Accordingly, we find that the Applicant has satisfied the requirement of residence in the United States in the physical custody of the U.S. citizen parent under section 320 of the Act.

Moreover, the Applicant has established that she was residing in her U.S. citizen mother's legal custody. The regulations provide that legal custody "refers to the responsibility for and authority over a child." *See* 8 C.F.R. § 320.1. Under the regulation, legal custody is presumed "[i]n the case of a child of divorced or legally separated parents . . . where there has been an award of primary care, control, and maintenance of a minor child to a parent by a court of law or other appropriate government entity pursuant to the laws of the state or country of residence." *Id.* The regulation further provides that "[t]he Service will consider a U.S. citizen parent who has been awarded 'joint custody,' to have legal custody of a child." The divorce decree for the Applicant's parents was issued by the [REDACTED] Cuba, on [REDACTED] 2003. The divorce decree indicates that both parties were domiciled in [REDACTED] Cuba, at the time. Absent evidence to the contrary, we conclude that the Applicant's parents were granted a divorce by a court of law pursuant to the laws of Cuba, as required by 8 C.F.R. § 320.1.

The divorce decree states, in part:

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....The minor...will be under the care of the mother. There will be shared custody of the minor by both parents, the father will provide child support...the father can see and take her out as he wishes and his job allows it and also having her with him....

The divorce decree indicates that the Applicant's parents were awarded shared custody of the Applicant. The regulations provide that a parent who has joint custody is considered to have legal custody of the child for purposes of derivative citizenship under section 320 of the Act. *See* 8 C.F.R. § 320.1(1). We find, therefore, that the Applicant was in her mother's legal custody as is required under section 320(a)(3) 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.

**ORDER:** The appeal is sustained.

Cite as *Matter of L-M-M-C-*, ID# 14305 (AAO Jan. 8, 2016)