



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

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

MATTER OF R-S-

DATE: JAN. 29, 2016

APPEAL OF TAMPA FIELD OFFICE DECISION

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

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

The record reflects that the Applicant was born in the Netherlands on [REDACTED] to married parents. The Applicant's father is a U.S. citizen based on his naturalization on May 12, 2014. The Applicant's mother was born in Ethiopia and is not a U.S. citizen. The Applicant's parents are still married. The Applicant is not a lawful permanent resident of the United States. The Applicant seeks a Certificate of Citizenship indicating that she derived U.S. citizenship through her father pursuant to section 320 of the Act, as amended by the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000).

In a March 3, 2015 decision, the Director denied the Form N-600, indicating that the Applicant had not submitted documentation to establish that she is a legal permanent resident or is in the custody of her U.S. citizen parent.

On appeal, the Applicant's father indicates that the Applicant was born in wedlock and that he and the Applicant's mother are still married. In support of the appeal, the Applicant submits a letter from her father, her parent's marriage certificate, and her birth certificate to establish that she was born in wedlock.

We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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 in [REDACTED]. Section 320 of the Act, as amended by the CCA, is therefore applicable to her case.

Section 320(a) of the Act provides, in pertinent part, that:

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 Applicant has shown that she meets two out of the three requirements for automatic citizenship under section 320(a) of the Act. Namely, the record reflects that the Applicant's father is a naturalized citizen of the United States, and that the father became a citizen while the Applicant was under 18 years of age. However, the Applicant has not shown that she fulfills the requirements under section 320(a)(3) of the Act. There is no evidence in the record to establish that she was admitted to the United States as a lawful permanent resident or that she is residing in the United States with her U.S. citizen father. The record reflects that the Applicant lives with her mother in the Netherlands. The term lawfully admitted for permanent residence means, in part: "the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed." 8 C.F.R. § 1.2. The Applicant is not "residing in the United States . . . pursuant to a lawful admission for permanent residence" and, therefore, did not automatically acquire U.S. citizenship upon her father's naturalization under section 320 of the Act.

Similarly, as the Applicant lives in the Netherlands and does not reside with her father in Florida, she is not in her father's physical custody. *See* section 101(a)(33) of the Act. Although the Applicant's father indicates that he is still married to the Applicant's mother and therefore he may have legal custody, the Applicant has not shown that she is in her father's physical custody in the United States. Accordingly, the Applicant has not established that she resides in the physical custody of her father, as required by 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 not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of R-S-*, ID# 14686 (AAO Jan. 29, 2016)