U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF L-Z-

DATE: JUNE 8, 2016

APPEAL OF ORLANDO, FLORIDA FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Syria, seeks a Certificate of Citizenship. *See* Immigration and Nationality Act (the Act) section 320, 8 U.S.C. § 1431. An individual born outside the United States, who automatically derived U.S. citizenship after birth but before the age of 18, may apply to receive a Certificate of Citizenship. Generally, for an individual claiming automatic U.S. citizenship after birth and who was born after February 27, 1983, the individual must have at least one U.S. citizen parent and be residing in that parent's custody in the United States as a lawful permanent resident before 18 years of age.

The District Director, New York, New York, denied the application. The Director concluded that the Applicant provided insufficient evidence to demonstrate that she resided in the United States in the legal and physical custody of her U.S. citizen father pursuant to a lawful admission for permanent residence, as required under section 320(a)(3) of the Act. The Applicant attempted to file a second Form N-600, Application for Certificate of Citizenship; however, the application was rejected.[1] The Applicant subsequently filed a motion to reopen and reconsider the denial of her application. The Field Office Director, Orlando, Florida, denied the motion on the basis that the Applicant did not state new facts or provide new evidence to demonstrate that the Form N-600 denial was in error, or that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy.

The matter is now before us on appeal. In the appeal, the Applicant submits evidence of residence in the United States since 2010. She claims that the Director focused on the fact that she did not provide sufficient evidence to establish that she resided in the United States when she was admitted into the country as a lawful permanent resident in 2003. The Applicant claims that she did reside in the country in 2003, and that even if she did not, evidence demonstrates that she nevertheless satisfied the residing in the United States pursuant to lawful admission for permanent residence requirement after 2010, when she filed her citizenship application, and while she was under the age of 18.

[1] The regulation at 8 C.F.R. § 341.5(e), states that once a Certificate of Citizenship has been denied, a subsequent Form N-600 will be rejected, and an applicant must instead submit a motion to reopen or reconsider.

Upon *de novo* review, we will sustain the appeal.

I. LAW

The Applicant is seeking a Certificate of Citizenship reflecting that she derived U.S. citizenship from her citizen father. The Applicant is a minor, who was born in Syria on to married foreign national parents. Her mother died on 2000. Her father became a United States citizen through naturalization on April 17, 2002. The Applicant was admitted to the United States as a lawful permanent resident on June 24, 2003.

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). In the present matter, the Applicant was born on , and she was admitted into the United States as a lawful permanent resident on June 24, 2003. Accordingly, section 320 of the Act, as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (CCA), which was in effect on June 24, 2003, 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.

II. ANALYSIS

The Director concluded that the Applicant provided insufficient evidence to demonstrate that she resided in the United States in the legal and physical custody of her citizen father, as required under section 320(a)(3) of the Act. On appeal, the Applicant claims that the Director focused on the fact that she did not reside in the United States pursuant to lawful admission for permanent residence in 2003. She submits evidence of residence in the United States since 2010, and claims that even if the evidence was insufficient to demonstrate that she resided in the country in 2003, the evidence nevertheless shows that she resided with her citizen father in the United States after 2010, and while

she was under the age of 18. The record includes apartment lease, utilities, daycare, and school transcript evidence; and Florida driver's license copies for the Applicant and her father.

The Applicant also submits a non-precedent Administrative Appeals Office decision. She asserts that we found evidence similar to that submitted in her case to be sufficient to satisfy the residing in the United States requirement contained in section 320(a)(3) of the Act. The regulation at 8 C.F.R. § 103.3(c) provides that our precedent decisions are binding on USCIS employees in the administration of the Act. Unpublished decisions, however, are not similarly binding. In addition, each application filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.2. In making a determination of statutory eligibility, we are limited to the information contained in the Applicant's individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

The record also contains evidence that the Applicant obtained a U.S. passport, and the Applicant indicates that under guidance contained at Volume 7 of the Department of State Foreign Affairs Manual, section 1159.1, an individual admitted into the United States as a lawful permanent resident is not required to submit additional evidence in order to establish residence in the United States for purposes of section 320(a)(3) of the Act. We are, however, not bound by guidance contained in the Department of State Foreign Affairs Manual.

The entire record was reviewed and considered. We find that the Applicant has sufficiently demonstrated that she resided in the United States in the legal and physical custody of her citizen father pursuant to a lawful admission for permanent residence and prior to her 18th birthday.

As stated above, to derive U.S. citizenship after birth, an individual born after February 27, 1983, must have at least one U.S. citizen parent and be residing in that parent's legal and physical custody in the United States as a lawful permanent resident before the age of 18. The Applicant was born on in Syria. Because she was born abroad, she is presumed to be a foreign national and bears the burden of establishing her 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 Applicant has established that her father became a naturalized U.S. citizen on April 17, 2002, when the Applicant was years old. The Applicant therefore satisfied the requirement contained in section 320(a)(1) of the Act. The record also reflects that the Applicant is a minor. She therefore also satisfies the section 320(a)(2) of the Act that she be under the age of 18. In addition, the Applicant was admitted into the United States as a lawful permanent resident on June 24, 2003, when she was years old, as required by the last clause in section 320(a)(3) of the Act.

At issue is whether the Applicant has shown that she resided in the United States in her citizen father's legal and physical custody since her admission into the country as a lawful permanent resident.

A. Residence in the United States in the legal and physical custody of the U.S. citizen parent

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 "in the case of . . . [a] biological child who currently resides with a surviving natural parent (if the other parent is deceased)." *See* 8 C.F.R. § 320.1(1)(ii).

Birth certificate evidence reflects that the Applicant is the biological child of her U.S. citizen father, and marriage certificate evidence demonstrates that the Applicant's parents married on and they were married at the time of the Applicant's birth on A death certificate reflects that the Applicant's mother died on The Applicant's father therefore became the Applicant's surviving natural parent when she was less than years old.

The record contains documentation dated in 2011 and 2012, indicating that the Applicant and her father resided in Florida at the same address. These documents include: an apartment lease and utility bills in the Applicant's father's name; daycare documentation with both the Applicant's and her father's names; the Applicant's and her father's Florida identification and driver's license documents, with the same address; and the Applicant's Florida school transcripts, indicating that the Applicant's residence was with her father. Upon review, the record sufficiently demonstrates that the Applicant resided with her father in the United States in 2011 and 2012, when she was between the ages of and Because the Applicant has demonstrated that she resided with her surviving father, we will presume that he had legal custody. *See* 8 C.F.R. § 320.1(1)(ii). The Applicant has therefore demonstrated that subsequent to her admission as a lawful permanent resident, and prior to turning 18, she resided in the United States in the legal custody of her citizen father.

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.) The apartment lease, utilities, daycare, school transcript, and state identification and driver's license evidence discussed above sufficiently demonstrates that the Applicant resided in Florida in 2011 and 2012, and that she was in her father's actual, uncontested custody during that time. The Applicant has therefore also established that subsequent to her admission into the country as a lawful permanent resident, and prior to her 18th birthday, she resided in the United States in the physical custody of her U.S. citizen father. Accordingly, the Applicant has satisfied the conditions set forth in section 320(a)(3) of the Act.

III. CONCLUSION

In view of the above, the Applicant has demonstrated that she is under the age of 18, and has resided in the United States in her U.S. citizen father's legal and physical custody pursuant to a lawful admission as a permanent resident. Accordingly, the Applicant has established that she derived U.S. citizenship from her father pursuant to 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). The Applicant has met that burden. Accordingly, we sustain the appeal.

ORDER: The appeal is sustained.

Cite as *Matter of L-Z-*, ID# 16605 (AAO June 8, 2016)