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

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

MATTER OF C-J-W-

DATE: JUNE 29, 2016

APPEAL OF HARTFORD, CONNECTICUT FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Haiti, 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 acquired U.S. citizenship at birth, or who automatically derived U.S. citizenship after birth but before the age 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 Field Office Director, Hartford, Connecticut, denied the application. The Director concluded that the Applicant did not derive citizenship under section 320 of the Act because she did not establish that she resided in the legal custody of her U.S. citizen adoptive parent for 2 years at the time of filing and adjudication of the Form N-600, Application for Certificate of Citizenship.

On appeal, the Applicant asserts that she was in her U.S. citizen mother's foster care before the adoption became final, and that during this time her mother had some legal rights and legal control over the Applicant. The Applicant avers that because those rights could be construed as legal custody, the Director's decision should be reversed. In the alternative, the Applicant requests that her Form N-600 be remanded to the Director for re-adjudication upon the 2nd anniversary of the adoption on [REDACTED] 2016. Finally, in the event we decline to grant the request, the Applicant asks us to vacate the Director's decision and allow her to withdraw the Form N-600 so that she can file another application a later date.

Upon *de novo* review, we will withdraw the Director's decision and remand the matter to the Director for further proceedings consistent with the foregoing opinion and entry of a new decision.

I. LAW

The record reflects that the Applicant was born in Haiti on [REDACTED] to foreign national parents. The Applicant obtained status as a lawful permanent resident of the United States on October 16, 2013. On [REDACTED] 2014, she was legally adopted by a U.S. citizen in Connecticut. On March 19, 2015, less than 1 year after the adoption was finalized, the Applicant filed Form N-600

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claiming derivative citizenship through her adoptive U.S. citizen mother under section 320 of the Act.

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 adopted by a U.S. citizen on [REDACTED] 2014. 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.
- (b) Subsection (a) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

Because the Applicant was adopted, she falls under the provisions of section 320(b) of the Act. Accordingly, the Applicant must also establish that she meets the requirements applicable to adopted children under section 101(b)(1) of the Act, 8 U.S.C. § 1101(b)(1), which states, in pertinent part:

The term “child” means an unmarried person under twenty-one years of age who is-

....

(E) (i) a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years

The regulations at 8 C.F.R. § 320.1 provide that “[i]n the case of an adopted child, a determination that a U.S. citizen parent has legal custody will be based on the existence of a final adoption decree.” 8 C.F.R. § 320.1(2).

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II. ANALYSIS

The issue presented on appeal is whether the Applicant has demonstrated that she satisfies the provision of section 320(b) of the Act, which requires an adopted child to reside in the legal custody of the adoptive parent for at least 2 years in order to qualify as a “child” for the purposes of derivative citizenship under section 320 of the Act.

The Director determined that the Applicant did not meet this requirement because she had not been in the adoptive mother’s legal custody for the requisite period at the time her Form N-600 was filed and adjudicated. Specifically, the Applicant was adopted on [REDACTED] 2014, and a decision on the Applicant’s Form N-600 was issued on September 16, 2015, before the second anniversary of the adoption.

On appeal, the Applicant asserts that although she was legally adopted in 2014, she resided in her mother’s legal custody since 2011, when she was placed in her foster care. The Applicant claims this placement was akin to legal custody, because under Connecticut law foster parents have some legal rights similar to those of natural parents and they are awarded certain degree of legal control over the child.

The evidence of the record includes, but is not limited to: the Applicant’s birth certificate; the certification of birth of the Applicant’s adoptive mother; a school registration form; the adoption decree; findings and orders of the State of Connecticut [REDACTED] regarding termination of parental rights, appointment of statutory parent/guardian, and the Applicant’s special immigrant status.

Upon review of the entire record, we conclude that the Applicant has not demonstrated that she met the 2-year legal custody requirement when the Director denied her Form N-600 in September 2015. However, because the Applicant has met this requirement now, through the passage of time, we will remand the matter to the Director for review and entry of a new decision.

A. Legal custody

In support of her claim that she was in her adoptive mother’s legal custody since 2011, the Applicant references sections 46b-29(p) and 52-466(f) of General Statutes of Connecticut. The first statute provides that a foster parent has a right to be heard in any Superior Court proceedings regarding a foster child living with the parent and comment on the best interest of such child. According to the second statute, a foster parent has standing to make an application for a writ of *habeas corpus* regarding the custody of a foster child under the foster parent’s care. In addition, the Applicant submits a copy of the Board of Education, Connecticut Registration Form, dated in June 2011, on which the Applicant’s adoptive mother is listed as her guardian. The Applicant avers that because the issue of legal guardianship and legal control of the child in foster care in the State of Connecticut is complex, her pre-adoption period of residence under the mother’s foster care should be counted

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towards the 2-year legal custody requirement. We do not find the Applicant's argument persuasive in light of other evidence in the record.

Legal custody "implies either a natural right or a court decree." *Matter of Harris*, 15 I&N Dec. 39, 41 (BIA 1970). The record includes a copy of the 2011 order of the State of Connecticut [REDACTED] (the Court), appointing the Commissioner of the Department of Children and Families (DCF) as the Applicant's statutory parent. Section 45a-718(b) of Connecticut General Statutes provides that:

[t]he statutory parent shall be the guardian of the person of the child, shall be responsible for the welfare of the child and the protection of his interests and shall retain custody of the child until he attains the age of eighteen unless, before that time, he is legally adopted or committed to the Commissioner of Children and Families or a licensed child-placing agency.

In addition, the 2013 Court order regarding the Applicant's special immigrant status, confirms that in November 2011 the State of Connecticut, acting by and through its child welfare agency, DCF, was appointed the Applicant's statutory parent and charged with pursuing her adoption. The order further states that the Applicant has resided with her foster family since June 2011. This evidence indicates that although the Applicant had resided in her mother's physical custody since 2011, the State of Connecticut had legal custody of the Applicant until her adoption in 2014. The 2-year residence requirement set forth in section 101(b)(1)(E) of the Act may be satisfied either before or after the adoption. *Matter of Repuyan*, 19 I&N Dec. 119, 120 (BIA 1984). However, legal custody vests over an adopted child by virtue of a court decree. See *Matter of Harris, supra*; 8 C.F.R. § 320.1(2). Accordingly, we find that the Applicant was not in her mother's legal custody before she was adopted on [REDACTED] 2014.

Although the Applicant has not demonstrated that she resided in her U.S. citizen adoptive mother's legal custody for at least 2 years prior to the filing or adjudication of her Form N-600 in September 2015, she meets this requirement now, as more than 2 years have passed since the date the Applicant's adoption was finalized.

Certificates of Citizenship are issued pursuant to section 341(a) of the Act, 8 U.S.C. § 1452, which provides, in part:

Upon proof to the satisfaction of the [Secretary of Homeland Security] that the applicant is a citizen and that the applicant's alleged citizenship was derived as claimed, or acquired, as the case may be, and upon taking and subscribing before a member of the Service within the United States to the oath of allegiance required by this Act of an applicant for naturalization, such individual shall be furnished . . . with a certification of citizenship

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The Applicant is currently under the age of 18, and she is residing in the United States as a lawful permanent resident. The Applicant therefore satisfies the provisions of sections 320(a)(2) and (3) of the Act regarding the age and permanent residence in the United States. The Applicant has also established that she meets the requirement of section 320(a)(1) of the Act, regarding U.S. citizenship of the parent, as she has submitted evidence to show that her adoptive mother was born in the United States. However, although the Applicant has presented some evidence, including the court orders and school registration, indicating that she resided with her adoptive mother at the time her Form N-600 was filed, the evidence is insufficient to determine whether the Applicant continued to reside in her mother's legal and physical custody as of the date of the second anniversary of the adoption on [REDACTED] 2016.

III. CONCLUSION

Under section 320 of the Act, a child of a U.S. citizen will automatically derive citizenship upon fulfillment of all eligibility criteria, which includes the requirement of the 2-year residence in the legal custody of a U.S. citizen, if the child was adopted. While the Applicant did not meet this requirement at the time she filed the Form N-600, more than 2 years have now passed since the Applicant was adopted.

Accordingly, we will remand the matter to the Director to determine whether the Applicant continued to reside in the legal and physical custody of her mother on the second anniversary of the adoption and to issue a new decision. If the new decision is adverse to the Applicant, it shall be certified to us for review.

Because the matter will be remanded, we do not address the Applicant's request to vacate the Director's adverse decision and allow her to withdraw the Form N-600.

ORDER: The decision of the Field Office Director, Hartford, Connecticut, is withdrawn. The matter is remanded to the Field Office Director, Hartford, Connecticut, for further proceedings consistent with the foregoing opinion and for entry of a new decision, which, if adverse, shall be certified to us for review.

Cite as *Matter of C-J-W-*, ID# 16280 (AAO June 29, 2016)