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

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

MATTER OF A-S-O-

DATE: SEPT. 29, 2016

APPEAL OF BOSTON, MASSACHUSETTS FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Brazil, seeks a Certificate of Citizenship. *See* Immigration and Nationality Act (the Act) sections 301(g) and 320, 8 U.S.C. §§ 1431 and 104(g) (*amended by* Act of November 14, 1986, Pub. L. 99-653, 100 Stat. 3655). 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 of 18, may apply to receive a Certificate of Citizenship. For an individual claiming to be a U.S. citizen *at birth*, and who was born to married parents on or after November 14, 1986, the individual must have been born to a U.S. citizen parent, and that parent must have been physically present in the United States for 5 years (with at least 2 years occurring after the age of 14) before the individual's birth. In the alternative, for an individual claiming U.S. citizenship *after birth* 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, Boston, Massachusetts, denied the application. The Director concluded that the Applicant did not establish that she held legal permanent resident status in the United States, as required by section 320(a)(3) of the Act.

The matter is now before us on appeal. On appeal, the Applicant's mother submits a letter stating that documents for legal permanent resident status for the Applicant have been filed with U.S. Citizenship and Immigration Services (USCIS). USCIS records indicate that the Applicant filed Form I-485, Application to Register Permanent Residence or Adjust Status, in March 2015, and the adjudication of that application is currently pending at the Boston, Massachusetts, Field Office under a separate file.

We will remand the matter to the Director for adjudication of the Applicant's pending adjustment application and further proceedings.

I. LAW

The Applicant is seeking a Certificate of Citizenship indicating that she acquired U.S. citizenship at birth from her U.S. citizen mother. The Applicant was born in Brazil on [REDACTED] to a married U.S. citizen mother and a foreign national father.

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The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth. See *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 n.3 (9th Cir. 2001) (internal quotation marks and citation omitted).

The Applicant was born in [REDACTED] to married parents, one of whom was a U.S. citizen and the other a foreign national. Accordingly, we will evaluate the Applicant's citizenship claim under the provisions of section 301(g) of the Act, which states, in pertinent part:

The following shall be nationals and citizens of the United States at birth:

. . . .

(g) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years.

The Director found that the Applicant was ineligible for a Certificate of Citizenship under section 320 of the Act. Section 320 of the Act, as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (CCA), was in effect on [REDACTED] when the Applicant was born. 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. PROCEDURAL HISTORY AND EVIDENCE OF RECORD

The Applicant filed Form N-600, Application for Certificate of Citizenship, in August 2015, indicating that she acquired US citizenship at birth from her mother. The Applicant was born to married parents in Brazil in [REDACTED] and was admitted to the United States on a non-immigrant B-2 visa in 2014.

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In September 2015, the Director issued a request for evidence (RFE), for documentation of the Applicant's entry into the United States, and her mother's current residence in the United States. In addition, the Director requested evidence of the Applicant's mother's physical presence in the United States prior to the Applicant's birth. The Applicant responded to the RFE in October 2015, submitting evidence of her U.S. citizen mother's physical presence in the United States. The documentation submitted indicates that the Applicant's mother spent approximately 3 months in the United States in 1996, while she attended medical training at the [REDACTED]

The Director denied the application, concluding that the Applicant did not establish that she is residing in the United States pursuant to a lawful admission for permanent residence, as required under section 320(a)(3) of the Act.

On appeal, the Applicant's mother states that the Applicant has applied for legal permanent resident status in the United States. USCIS records confirm that the Applicant's Form I-485 has been submitted under a different file number, which is currently pending with the USCIS Field Office in Boston, Massachusetts.

We have reviewed all the evidence in the record of proceeding.

### III. ANALYSIS

The Applicant has established that her mother is a U.S. citizen by submitting copies of her mother's U.S. birth certificate and U.S. passport. The main issues on appeal are whether the Applicant has demonstrated that she either acquired the U.S. citizenship from her mother at birth under section 301(g), or that she derived the U.S. citizenship after birth pursuant to section 320 of the Act.

In analyzing this case under section 301(g) of the Act, the underlying issue is whether the Applicant has shown that her U.S. citizen mother was physically present in the United States for a period or periods totaling not less than 5 years prior to the Applicant's birth, at least 2 of which were after her mother attained the age of 14 years. We find that the evidence presented does show that the Applicant's U.S. citizen mother was physically present in the United States for 2 years after the Applicant's mother's 14th birthday on [REDACTED] and prior to the Applicant's birth in [REDACTED]

Under section 320 of the Act, the issue is whether the Applicant has shown that she is residing in the legal and physical custody of her U.S. citizen mother pursuant to a lawful admission for permanent residence, as required under section 320(a)(3) of the Act. The record indicates the Applicant was admitted to the United States as a non-immigrant, under the classification of a B-2 visitor, and that the Applicant has not yet attained lawful permanent resident status. As such, the Applicant does not qualify for a Certificate of Citizenship under section 320 of the Act.

USCIS records indicate that the Applicant has applied for permanent resident status in the United States through the submission of Form I-485 in March 2016. However, the Applicant's application

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for permanent resident status has been placed in a separate file. The Applicant can still satisfy this requirement as she is under the age of 18 and her adjustment application is pending. We will therefore remand the matter to the Director for adjudication of the adjustment application and for a new decision of the Form N-600.

A. Acquisition of U.S. Citizenship at Birth under Section 301(g) of the Act

In order to establish acquisition of U.S. citizenship at birth the Applicant has to show that her U.S. citizen mother was physically present in the United States for at least 5 years, 2 of which were after she turned 14 in [REDACTED]

With regard to the Applicant's mother's physical presence in the United States prior to [REDACTED] the record includes copies of report cards for the Applicant's mother at an elementary school in [REDACTED] Pennsylvania, which indicate that she attended school in the United States during the 1979-80 and 1980-81 school years. The record further includes U.S. medical records for the Applicant's mother dated 1973 to 1980. These documents indicate that the Applicant's mother was physically present in the United States for 7 years prior to attaining the age of 14.

Section 301(g) of the Act also requires the physical presence in the United States of the U.S. citizen parent to include 2 years after attaining the age of 14, and prior to the birth of the child. Evidence of the Applicant's mother's physical presence in the United States after her 14th birthday in [REDACTED] and prior to the Applicant's birth, includes documentation that she participated in a medical training program in [REDACTED] Florida, from June 1, to August 31, 1996. The evidence, which covers 3 months, does not show that the Applicant's mother was physically present in the United States for 2 years after attaining the age of 14.

As the Applicant did not establish that her U.S. citizen mother was physically present in the United States for the period of time required under section 301(g) of the Act, the Applicant does not qualify for a Certificate of Citizenship under this section of the law.

B. Derivative Citizenship under Section 320 of the Act

The Applicant has fulfilled two requirements for derivation of citizenship under section 320 of the Act. Namely, the Applicant has established that her mother is a U.S. citizen by submitting a copy of her mother's U.S. birth certificate. In addition, the birth certificate of [REDACTED] the Applicant establishes that she is under the age of 18 years.

However, in order to qualify for derivative citizenship under section 320 of the Act, the Applicant must also show that she is residing in the legal and physical custody of her U.S. citizen mother pursuant to a lawful admission for permanent residence, as required under section 320(a)(3) of the Act. In this particular case, the record indicates that the Applicant is currently in the United States under B-2 non-immigrant visa status, and does not have lawful permanent residence status in the United States. The Director denied the Applicant's Form N-600 on that basis.

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On appeal, the Applicant's mother states that documents for legal permanent resident status for the Applicant have been filed with USCIS. The record indicates that the Applicant filed Form I-485 in March 2016, and her application is currently pending, under a separate file number.

As the decision on the Applicant's Form I-485 has a direct effect on whether she qualifies for a Certificate of Citizenship, we will remand the case for further adjudication of the Applicant's Form I-485, and subsequent adjudication of the Applicant's Form N-600.

#### IV. CONCLUSION

The Applicant has not demonstrated that she acquired citizenship at birth under section 301(g) of the Act, because she has not established that her mother met the physical presence requirement. Further, the Applicant has not shown that she derived citizenship under section 320 of the Act because she has not submitted evidence that she is residing in the United States in the legal and physical custody of her mother as a lawful permanent resident. However, the Applicant can still satisfy this requirement as she is under the age of 18 and her adjustment application is pending. We will therefore remand the matter to the Director for adjudication of the adjustment application and for a new decision of the Form N-600. The Applicant will also be provided an opportunity to supplement the record with evidence that she is residing in the legal and physical custody of her U.S. citizen parent.

**ORDER:** The decision of the Field Office Director, Boston, Massachusetts, is withdrawn. The matter is remanded to the Field Office Director, Boston, Massachusetts, for the entry of a new decision on the Form N-600 once the adjudication of the Applicant's adjustment application is complete, and which, if adverse, shall be certified to us for review.

Cite as *Matter of A-S-O-*, ID# 114185 (AAO Sept. 29, 2016)