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

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

MATTER OF Q-J-A-B-

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 Canada, seeks a Certificate of Citizenship. *See* Immigration and Nationality Act (the Act) § 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 Field Office Director, Boston, Massachusetts, denied the application because the Applicant did not demonstrate that he had a U.S. citizen parent when he filed his Form N-600, Application for Certificate of Citizenship.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and he claims that he satisfies conditions for derivative citizenship.

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

I. LAW

The Applicant is seeking a Certificate of Citizenship indicating that he derived citizenship through his U.S. citizen parent. The Applicant was born in Canada on [REDACTED] to married foreign national parents. He was admitted into the United States as a lawful permanent resident on April 29, 2008. The Applicant's father became a United States citizen through naturalization on July 15, 2015. His mother became a naturalized citizen on July 30, 2015.

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). In the present matter, the Applicant was born in [REDACTED] and his father became a naturalized U.S. citizen in July 2015. 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 in 2015, therefore applies to his case.

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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 record reflects that the Applicant filed the Form N-600 in January 2015. The Director of the Boston, Massachusetts Field Office, denied the application on the grounds that the Applicant did not demonstrate that he had a U.S. citizen parent when he filed his application.

The Applicant indicates on appeal that he meets conditions for derivative citizenship under section 320 of the Act, and he submits evidence that his father became a naturalized U.S. citizen in July 2015. We sent a letter to the Applicant in July 2016, requesting evidence demonstrating that he resided in the United States in the legal and physical custody of his citizen father. The Applicant replied by sending a copy of his parents' marriage certificate and school transcript evidence.

The entire record has been reviewed and considered. Upon review, we find that the Applicant has demonstrated that he derived citizenship through his father under section 320 of the Act.

## III. ANALYSIS

The Applicant was born to foreign national parents in Canada, in [REDACTED]. 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 issue here is whether the Applicant demonstrated that prior to his 18th birthday, he had a U.S. citizen parent, and that he resided in the United States in the legal and physical custody of the citizen parent.

The record contains a copy of the Applicant's father's Certificate of Naturalization, demonstrating that he became a U.S. citizen through naturalization on July 15, 2015, when the Applicant was [REDACTED] years old. The Applicant therefore meets the citizen parent requirement contained in section 320(a)(1) of the Act. The Applicant has also provided sufficient evidence to demonstrate that prior

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to his 18th birthday, he satisfied the legal and physical custody requirements contained in section 320(a)(3) of the Act.

Under the regulation, legal custody is presumed in the case of . . . [a] biological child who currently resides with both natural parents (who are married to each other, living in marital union, and not separated.” See 8 C.F.R. § 320.1(1)(i).

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) and *Matter of M-*, 3 I&N Dec. 850, 856 (BIA 1950).

The Applicant indicates on the Form N-600 that his parents are married, and the record contains a copy of his parents’ marriage certificate reflecting that they married in Canada on [REDACTED] 1989. The record also contains school transcript evidence demonstrating that the Applicant was enrolled in a high school in [REDACTED] Massachusetts between 2013 and 2016. The school transcript contains the Applicant’s parents’ names, and the address on the transcript is the address listed on his parents’ bank statements and on their adjustment of status immigration forms contained in the record.

The totality of the evidence in the record demonstrates that from at least 2013 to 2016, the Applicant resided in the United States with both of his parents, who were married and living in a marital union. The Applicant thus established that he resided in the United States in his father’s legal and physical custody when his father became a U.S. citizen in 2015, and thereafter. He therefore meets the custody requirements set forth in section 320(a)(3) of the Act. In addition, the record reflects that the Applicant was admitted into the United States as a lawful permanent resident on April 29, 2008, when he was [REDACTED] years old, as required under section 320(a)(3) of the Act.

The Applicant also satisfied the section 320(a)(2) of the Act requirement that all conditions be met while he was under the age of 18. As such, the Applicant meets all of the conditions for derivative citizenship under section 320(a) of the Act.

#### IV. CONCLUSION

In view of the above, the Applicant has demonstrated that prior to his 18th birthday, his father became a U.S. citizen, and that he resided in the legal and physical custody of his citizen father. Accordingly, the Applicant has established that he derived U.S. citizenship 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.

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**ORDER:** The appeal is sustained.

Cite as *Matter of Q-J-A-B-*, ID# 116140 (AAO Sept. 29, 2016)