



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

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

MATTER OF S-S-S-R-

DATE: APR. 19, 2017

APPEAL OF NEW YORK, NEW YORK DISTRICT OFFICE DECISION

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

The Applicant, who was born in the Dominican Republic in [REDACTED], seeks a Certificate of Citizenship indicating that she derived U.S. citizenship from her father. *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 Director of the New York, New York, District Office denied the application finding the Applicant did not derive U.S. citizenship under section 320 of the Act because she did not establish, as required, that she was residing in the United States in the legal custody of her U.S. citizen father after she was admitted to the United States for permanent residence and before she turned 18 years of age.

On appeal, the Applicant submits additional evidence, including a 2015 custody order from the Dominican Republic and a copy of her U.S. passport, and asserts that she meets all of the requirements of for derivative citizenship under section 320 of the Act.

We will dismiss the appeal. The Applicant has not demonstrated that her father had legal custody for the purposes of derivative citizenship before she reached 18 years of age.

**I. LAW**

A person who claims to have derived U.S. citizenship through naturalization of a parent may apply to the Secretary of Homeland Security for a Certificate of Citizenship and, upon satisfaction that such person is a citizen as claimed the Secretary shall furnish a Certificate of Citizenship. *See* section 341(a) of the Act, 8 U.S.C. § 1452(a).

To determine whether the Applicant derived U.S. citizenship and, thus, whether she is eligible for a Certificate of Citizenship, we apply "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 abroad in [REDACTED] to married Dominican citizen parents. In [REDACTED] 2001, when the Applicant was [REDACTED] years old, her parents divorced. The Applicant was admitted to the United States as a lawful permanent resident in 2013. Her father became a U.S. citizen through naturalization in April 2015, when the Applicant was [REDACTED] years of age. The Applicant has not claimed or submitted evidence that her mother is a U.S. citizen.

The Applicant turned 18 years of age in [REDACTED]. The law in effect at that time was section 320 of the Act, as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (CCA). This section applies to individuals who, like the Applicant, were under the age of 18 when the law went into effect on February 27, 2001,<sup>1</sup> and provides, in pertinent part, that:

- (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 record reflects that the Applicant has satisfied some of the conditions listed above. She was under the age of 18 when she began residing in the United States as a lawful permanent resident, and when her father naturalized. The remaining issue is whether the Applicant has established her father had legal and physical custody before she turned 18 years of age in [REDACTED].

The Director determined that the Applicant did not demonstrate she was in the legal custody of her U.S. citizen father, because the Dominican court awarded sole legal custody to her mother at the conclusion of the divorce proceedings in 2001, and the Applicant did not provide evidence that her father subsequently obtained legal custody.

On appeal, the Applicant presents a copy of a custody order issued in [REDACTED] 2015 by the Dominican Court of Children and Adolescents, granting legal custody of the Applicant to her father, with her mother's consent. The Applicant indicates that she obtained the custody order in response to a request for proof of the father's legal custody issued by the U.S. Department of State (DOS) in connection with her U.S. passport application. She also submits a copy of the U.S. passport, as

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<sup>1</sup> *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

evidence that she was determined to be a U.S. citizen by the DOS, and claims that she met the requirements of section 320 of the Act for derivative citizenship.

We disagree and find that the 2015 Dominican custody order does not satisfy the legal custody requirement under section 320 of the Act and the corresponding regulations. As the Applicant has not met the *legal* custody requirements, we will not address whether she has shown she was in her father's *physical* custody.

A. Legal Custody of the U.S. Citizen Parent

The regulation at 8 C.F.R. § 320.1 defines the term “legal custody” in section 320 of the Act as responsibility for and authority over a child. The regulation provides further that if the child’s parents are divorced or legally separated, U.S. Citizenship and Immigration Services (USCIS) will find a U.S. citizen parent to have legal custody of a child where there has been an award of primary care, control, and maintenance of a minor child to a parent by a court of law or other appropriate government entity *pursuant to the laws of the state or country of residence*. See 8 C.F.R. § 320.1(2) (emphasis added).<sup>2</sup>

The 2001 divorce decree issued in the Dominican Republic states that the “guardianship, care, and protection” of the Applicant and her siblings was awarded to her mother. The Applicant has not provided sufficient evidence to show that her father was subsequently granted legal custody under the laws of the state of New York where she resided after admission to the United States for permanent residence in 2013.

Although the Applicant submits on appeal a copy of the custody order issued by the Dominican court in [REDACTED] 2015, the order does not comply with the regulations, which require legal custody award to be under the law of the state or country of residence. Here, the record reflects that both the Applicant and her father resided in the state of New York at the time the Dominican court awarded legal custody to the father. The court’s order confirms that the Applicant and her father were domiciled in New York, but nevertheless grants legal custody to the father pursuant to the provisions of the Dominican Code for the System Protection and Fundamental Rights of Children and Adolescents. Because the custody order was not issued pursuant to the laws of the state of New York where the Applicant and her father resided, we may not recognize the Applicant’s father as having legal custody in these proceedings.

As the Applicant has not submitted other evidence to demonstrate that her father had legal custody before she turned 18 years of age in [REDACTED] we conclude that the Applicant has not established that she was residing in the United States as a lawful permanent resident in the legal custody of her father as required in section 320(a)(3) of the Act. Accordingly, the Applicant has not established she derived U.S. citizenship from her father under section 320 of the Act.

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<sup>2</sup> The same regulation states that a parent awarded “joint custody” is also considered to have legal custody of the child. The Applicant does not claim or submit evidence that parents had joint custody.

B. Applicant's U.S. Passport

We recognize that the Applicant has been issued a U.S. passport by the DOS. However, jurisdiction over issuance of Certificates of Citizenship rests with USCIS, not the DOS. When determining an applicant's statutory eligibility for a Certificate of Citizenship, we rely on the record before us. *See* 8 C.F.R. § 103.2(b)(16)(ii). Unfortunately, in this case, the evidence is insufficient to support the Applicant's claim that she automatically derived U.S. citizenship upon the father's naturalization and that she is eligible for issuance of a Certificate of Citizenship on that basis.

III. CONCLUSION

The Applicant has not established she derived U.S. citizenship from her father pursuant to section 320 of the Act, because she has not demonstrated she resided in the father's legal custody in the United States as a lawful permanent resident while she was under 18 years of age. The Applicant is therefore not eligible for a Certificate of Citizenship.

**ORDER:** The appeal is dismissed.

Cite as *Matter of S-S-S-R-*, ID# 222753 (AAO Apr. 19, 2017)