



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

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

MATTER OF A-I-K-

DATE: SEPT. 12, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Applicant, who was born in [REDACTED] in Ukraine, seeks a Certificate of Citizenship indicating he derived U.S. citizenship from his mother. *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 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 must be residing in that parent's legal and physical custody in the United States as a lawful permanent resident before 18 years of age.

The Director of the New York District Office denied the application, concluding that the Applicant did not demonstrate he derived U.S. citizenship from his mother because he did not establish he was residing in his mother's legal custody. We dismissed an appeal of this denial, finding that although the Applicant did establish he was residing in his mother's physical custody in the United States, he did not demonstrate that he was in her legal custody.

The matter is now before us on a motion to reopen.<sup>1</sup> On motion, the Applicant submits a 2002 statement from his father, relinquishing his parental rights, and contends this document establishes that he was in his mother's legal custody in the United States.

Upon *de novo* review, we will grant the motion to reopen and sustain the appeal.

I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit. On motion, the Applicant submits additional evidence which overcomes our prior decision and establishes that he is eligible for a Certificate of Citizenship.

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<sup>1</sup> The Applicant indicated on his Form I-290B, Notice of Appeal or Motion, that he was filing both a motion to reopen and a motion to reconsider the decision. However, as the Applicant did not satisfy the requirements of a motion to reconsider, we will treat this matter solely as a motion to reopen.

## II. ANALYSIS

In our previous decision, we found that the Applicant satisfied some of the conditions to be eligible for a Certificate of Citizenship under section 320 of the Act. He was under the age of 18 when his mother naturalized, and when he began residing in the United States as a lawful permanent resident. We further found that U.S. Citizenship and Immigration Services records and documentary evidence showed that the Applicant lived with his mother since he was paroled into the United States in 2002. Based on this documentation, and absent evidence that the Applicant's father objected to such living arrangement, we concluded the Applicant satisfied the physical custody requirement of section 320(a)(3) of the Act through residence with his U.S. citizen mother.

We dismissed the appeal, however, because the record did not contain sufficient evidence that the Applicant's mother had legal custody over him, as section 320(a)(3) requires a child to be residing in the physical and legal custody of the U.S. citizen parent. At the time of our prior decision, the record indicated that the Applicant's mother divorced his father in [REDACTED] 2001, but the divorce decree did not include information about custody of the Applicant.

Where there is no "judicial determination or judicial or statutory grant of custody in the case of legal separation of the parent of a person claiming citizenship . . . the parent having actual uncontested custody is to be regarded as having 'legal custody' . . ." *Matter of M-*, I&N Dec. 850, 856 (BIA 1950): "[T]wo predominant indicators of 'actual uncontested custody' are (i) the child's physical residence, and (ii) consent to custody by the non-custodial parent." *Garcia v. USICE (Dept. of Homeland Security)*, 669 F.3d 91, 97 (2nd Cir. 2001) (citing *Bagot v. Ashcroft*, 398 F.3d 252, 267 (3rd Cir. 2005)).

On motion, the Applicant submits a 2002 statement of his father before the Guardianship Board of [REDACTED] District of the City of [REDACTED] Ukraine, in which he relinquished his parental rights over the Applicant, and asked the Guardianship Board to issue a permit for the Applicant to be adopted by his mother's current spouse, giving the Applicant his mother's current spouse's surname. This evidence, along with our previous determination that the Applicant has been residing with his mother since his entry into the United States in 2002, demonstrates his mother's legal custody of him. Accordingly, the Applicant has established that he was residing in the United States in his mother's physical and legal custody as section 320(a)(3) of the Act requires.

## III. CONCLUSION

The Applicant has demonstrated by a preponderance of the evidence that he has satisfied all requirements to derive citizenship from his U.S. citizen mother. The Applicant is therefore eligible for a Certificate of Citizenship.

*Matter of A-I-K-*

**ORDER:** The motion to reopen is granted and the appeal is sustained.

Cite as *Matter of A-I-K-*, ID# 540950 (AAO Sept. 12, 2017)