U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF J-E-K-

DATE: SEPT. 21, 2017

APPEAL OF MONTGOMERY, ALABAMA FIELD OFFICE DECISION

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

The Applicant, who was born in South Korea in 1994, seeks a Certificate of Citizenship reflecting she derived U.S. citizenship from her mother. *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 Montgomery, Alabama, Field Office denied the application, concluding that the Applicant provided insufficient evidence to demonstrate she resided in the United States in the physical custody of her U.S. citizen mother, as required under section 320(a)(3) of the Act.

On appeal, the Applicant submits additional evidence, and claims that the record sufficiently demonstrates she meets section 320 of the Act physical custody conditions.

Upon *de novo* review, we will remand the matter to the Director for further proceedings consistent with our opinion.

I. LAW

The record reflects that the Applicant was born in South Korea on [redacted] 1994, to married foreign national parents who divorced in 2007. The Applicant was admitted into the United States as a lawful permanent resident in 2006, and her mother became a naturalized U.S. citizen in 2011. There is no evidence indicating that her father is a U.S. citizen, and the Applicant is seeking a Certificate of Citizenship indicating that she derived citizenship from her U.S. citizen mother.

For derivative citizenship purposes, 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). Section 320 of the Act, as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631, which was in effect when the Applicant's mother became a U.S. citizen and when the Applicant turned 18 years of age, applies to her derivative citizenship claim.

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.

Because the Applicant was born abroad, her is presumed to be a foreign national and bears the burden of establishing his claim to U.S. citizenship by a preponderance of credible evidence. *See Matter of Baires-Larios,* 24 I&N Dec. 467, 468 (BIA 2008).

II. ANALYSIS

The sole issue in this case is whether the Applicant has established that she resided in the United States in her mother's physical custody after her mother became a U.S. citizen through naturalization on December 5, 2011, and before the Applicant turned 18 years of age, on [redacted] 2012, as required under section 320(a)(3) of the Act.[1] To demonstrate this, the Applicant submits divorce and custody order documentation, school and medical records, and a copy of her U.S. passport issued to her in May 2012.

Upon review, we find the Applicant has provided insufficient evidence to establish that she met the physical custody conditions set forth in section 320(a)(3) of the Act. Nevertheless, because the record contains a copy of a U.S. passport issued to the Applicant by the U.S. Department of State on May 8, 2012, we must remand the matter for the Director to consider the Applicant's citizenship claim anew.

While undefined in the statute and regulations, case law defines the term "physical custody" in derivative citizenship proceedings as "actual uncontested custody," interpreted to mean actual residence with the parent. *See Matter of M-*, 3 I&N Dec. 850, 856 (BIA 1950); *Bagot v. Ashcroft*,

[1] Section 320(a)(1) of the Act naturalized parent conditions, as well as lawful permanent resident and legal custody elements of section 320(a)(3) of the Act have been met. Specifically, the record reflects that the Applicant was admitted into the United States as a lawful permanent resident in September 2006, when she was 11 years of age, and that her mother became a naturalized U.S. citizen in 2011, when the Applicant was 17 years of age. The record also contains her parents' [redacted] 2007 divorce decree and a [redacted] 2009 modified order showing the parents divorced in the state of Georgia and that they were awarded joint legal custody over the Applicant. *See* 8 C.F.R. § 320.1.

398 F. 3d 252, 267 (3d Cir. 2005). Under section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33), "[t]he term 'residence' means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent." Accordingly, the Applicant must demonstrate that her principal, actual dwelling place when her mother became a naturalized U.S. citizen or thereafter, and before the Applicant turned 18 years of age, was with her mother.

The record reflects that the Applicant's mother was awarded sole physical custody over the Applicant when her parent obtained a divorce in the state of Georgia in 2007. A subsequent court order shows, however, that her parents' physical custody order was modified in 2009 when the Applicant was 15 years of age, with primary physical custody over the Applicant being awarded to her father, and secondary custody (essentially every other weekend and on alternating holidays) being awarded to her mother. Based on the modified physical custody order, the Applicant's principal, actual dwelling place after 2009 was with her father. Moreover, the Applicant's high school records covering the period of time between January 2009 and May 2013, list only her father's name and address. A December 2012 medical document for the Applicant also lists only her father's address.

The Applicant does not dispute that her father had primary physical custody over her after 2009. She claims, though, that her father was often away on business trips, and she therefore lived mostly with her mother. The Applicant does not specify where, when, and for how long her father traveled, and she provides no independent evidence to support her assertions. The Applicant also contends that she moved during the 2011 and 2012 time period, and that any documents showing her shared residence with her mother were lost during the move. Again, her claims are vague and she provides no evidence to corroborate her statements. The Applicant's claims therefore carry limited evidentiary weight. *See Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989) (in ascertaining the evidentiary weight of affidavits or statements, USCIS must determine the basis for the claimant's knowledge of the information, and whether the statement is plausible, credible, and consistent both internally and with the other evidence of record).

The Applicant submits her mother's 2011 and 2012 federal income tax returns to show that her mother claimed her as a dependent for tax purposes during those years. However, these documents, without other corroborating evidence of shared residence, such as school or medical records, are not sufficient to establish that the Applicant resided with her mother. In this case the school and medical records contained in the record reflect that the Applicant's principal, actual dwelling place was with her father, and not her mother, in 2011 and 2012.

The Applicant also submits utility bills for her mother, dated between August and October 2012. Although the utility bills demonstrate where the Applicant's *mother* lived during those months, they do not demonstrate that the Applicant resided with her mother. In particular, the mother's billing

address is not the address listed on the Applicant's 2012 school and medical documentation, and the bills do not reference or contain the Applicant's name.[2]

The Applicant bears the burden of proof to establish her eligibility for citizenship under section 320 of the Act. *See* 8 C.F.R. § 320.3(b)(1). Upon review, we find that the Applicant has provided insufficient evidence to demonstrate that she resided in the United States in her mother's physical custody when her mother became a naturalized U.S. citizen in December 2011, or thereafter, and before the Applicant turned 18 years of age in [redacted] 2012.

III. CONCLUSION

The Applicant has not demonstrated that she met the physical custody requirements set forth in section 320(a)(3) of the Act. Accordingly, she cannot derive U.S. citizenship through her mother pursuant to section 320 of the Act. However, as the record contains a copy of a U.S. passport issued to the Applicant by the U.S. Department of State on May 8, 2012, we must remand the matter to the Director to consider the Applicant's citizenship claim anew.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of J-E-K-*, ID# 595735 (AAO Sept. 21, 2017)

[2] Bank statements for the Applicant containing her mother's address, also do not establish the Applicant's claims, as the statements are dated in 2016, several years after the Applicant's 18th birthday.