U.S. Citizenship and Immigration Services

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

MATTER OF J-H

DATE: MAR. 15, 2018

APPEAL OF NEW YORK, NEW YORK DISTRICT OFFICE DECISION

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

The Applicant, who was born in China in 1997, seeks a Certificate of Citizenship reflecting that he derived U.S. citizenship from his father. 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 Director of the New York, New York District Office denied the application, concluding that the Applicant provided insufficient evidence to demonstrate he resided in the United States in the physical custody of his U.S. citizen father, as required under section 320(a)(3) of the Act.

On appeal, the Applicant submits additional evidence, and indicates that the record shows he meets section 320 of the Act custody conditions.

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

## I. LAW

The record reflects that the Applicant was born in China on [redacted] 1997, to unmarried foreign national parents who married in 2005. He was admitted into the United States as a lawful permanent resident in September 2010, and his father became a naturalized U.S. citizen on August 13, 2013. There is no evidence indicating that his mother is a U.S. citizen, and the Applicant is seeking derivative citizenship through his father.

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 father became a U.S. citizen and when the Applicant turned 18, applies to his 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.
>
> (1) The child is under the age of eighteen years.
>
> (1) 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, he 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). The "preponderance of the evidence" standard requires that the record demonstrate the Applicant's claim is "probably true," based on the specific facts of his case. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)).

## II. ANALYSIS

The Applicant meets several requirements for derivative citizenship under section 320(a) of the Act. Naturalization certificate evidence shows that his father became a U.S. citizen in August 2013, when the Applicant was 15 years old. He has therefore satisfied the requirement in section 320(a)(1) of the Act. The Applicant was also admitted into the United States as a lawful permanent resident in September 2010, at the age of 12. He thus meets requirements set forth in the last clause of section 320(a)(3) of the Act.

The issue on appeal is whether the Applicant has established that he resided in the United States in his father's physical custody after the father became a U.S. citizen on August 13, 2013, and before the Applicant turned 18, on [redacted] 2015, as required under section 320(a)(3) of the Act.[1] To demonstrate this, the Applicant submits three letters. This evidence is insufficient to establish that the Applicant meets section 320(a)(3) of the Act conditions.

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. *Matter of M-*, 3 I&N Dec. 850, 856 (BIA 1950); *Bagot v. Ashcroft*,

[1] Although not addressed in the Director's decision, the Applicant must also establish that he resided in the United States in his father's *legal* custody during the required time period; however, we find it serves no purpose to address this issue since as discussed, the Applicant has not demonstrated that he resided in his citizen father's physical custody.

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." In order to satisfy section 320(a)(3) of the Act physical custody conditions, the Applicant must therefore show that his principal, actual dwelling place when his father became a naturalized U.S. citizen or thereafter, and before he turned 18, was in the United States with his father.

The Applicant submits a March 2015 letter from a medical office to establish that he resided with his father in New York during the required time period; however, the letter indicates only that the Applicant's father was a patient at the facility, and it does not mention the Applicant. It therefore does not corroborate the Applicant's claims. Two letters from individuals claiming generally that the Applicant, his father, and his mother and sister were tenants at their apartment buildings in New York between July 2012 and April 2016 also have limited evidentiary weight, as they are vague and uncorroborated by an apartment lease, rental receipts, utility bills, or other documentary evidence. *See Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989)(providing that in ascertaining the evidentiary weight of affidavits or statements, U.S. Citizenship and Immigration Services 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).

These letters, without other corroborating evidence of shared residence (such as medical records or school letters with the Applicant's name, addressed to the U.S. citizen parent; civil registration documents in the United States showing his name with the U.S. citizen parent's name and the resident address, etc.), do not sufficiently demonstrate that the Applicant's principal, actual dwelling place was in the United States with his father between August 2013 and [redacted] 2015.

Finally, although the Applicant submits his parents' tax returns listing him as a dependent, we note that these returns relate to the 2016 calendar year after the Applicant had already turned 18, and consequently do not corroborate the Applicant's residence with his father during the applicable period of time, or from August 13, 2013 until [redacted] 2015. The Applicant has therefore not established that he meets the physical custody requirements set forth in section 320(a)(3) of the Act.

## III. CONCLUSION

The Applicant has provided insufficient evidence to demonstrate that he resided in the United States in his father's physical custody after his father became a U.S. citizen, and prior to turning the Applicant turning 18, as required. He therefore cannot derive citizenship through his father under section 320 of the Act and his application remains denied.

**ORDER:** The appeal is dismissed.

Cite as *Matter of J-H-*, ID# 1066357 (AAO Mar. 15, 2018)