



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

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

MATTER OF B-G-P-M-

DATE: APR. 2, 2019

APPEAL OF KENDALL FIELD OFFICE DECISION

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

The Applicant, who was born abroad in 2005, seeks a Certificate of Citizenship indicating that she derived U.S. citizenship from her mother. Immigration and Nationality Act (the Act) § 320, 8 U.S.C. § 1431. Generally, to establish derivative U.S. citizenship after birth an individual born after February 27, 1983, must show that he or she had at least one U.S. citizen parent and was residing in that parent's legal and physical custody in the United States as a lawful permanent resident before turning 18 years of age.

The Director of the Kendall Filed Office, Miami, Florida, denied the application, concluding that the Applicant did not establish she derived U.S. citizenship from her mother, because she did not provide evidence that her mother had legal custody after her parents divorced.

On appeal, the Applicant submitted a copy of a Divorce Judgment Certificate issued by a Cuban municipal court; however, our initial review indicated that such document is insufficient to establish legal dissolution of marriage under Cuban law. We also noted that the evidence was inadequate to show that the Applicant resided in the United States in her mother's physical custody as a lawful permanent resident. To give the Applicant an opportunity to supplement the record and overcome these deficiencies, we issued a notice of intent to dismiss (NOID). We have received the Applicant's response and consider the record complete.

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

I. LAW

The Applicant was born in Cuba to married parents. She was admitted to the United States as a lawful permanent resident in 2011, at the age of six years. Her mother became a U.S. citizen through naturalization in 2017, when the Applicant was 12 years old.

To determine if the Applicant derived U.S. citizenship from her mother, we apply "the law in effect at the time the critical events giving rise to eligibility occurred." *Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005). The last critical event in this case is the naturalization of the Applicant's mother in 2017. We therefore consider the Applicant's derivative citizenship claim under section 320 of the

Act, as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (CCA), and in effect since 2001. This section 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.

Because the Applicant was born abroad, she is presumed to be a foreign national and bears the burden of establishing her claim to U.S. citizenship by a preponderance of credible evidence. *Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008). Under the preponderance of the evidence standard, the Applicant must demonstrate that her claim is “probably true,” or “more likely than not.” *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Applicant has satisfied the conditions in sections 320(a)(2) and (3) of the Act, as she was under the age of 18 years and a lawful permanent resident when her mother naturalized. The remaining issue, therefore, is whether the Applicant has shown that she was residing in her mother’s legal and physical custody at the time. We have reviewed the entire record, including the Applicant’s response to our NOID, and find that although the evidence is now sufficient to establish the mother’s physical custody, the Applicant has not demonstrated that she meets the legal custody requirement for derivative citizenship.

A. Physical Custody

The Applicant has shown that she was residing in her mother’s physical custody when the mother naturalized in 2017. Neither the Act nor the regulations define the term “physical custody.” However, U.S. federal courts and the Board of Immigration Appeals have considered physical custody in the context of “actual uncontested custody” in derivative citizenship proceedings, and interpreted it to mean actual residence with the parent. *See Bagot v. Ashcroft*, 398 F.3d 252, 267 (3d Cir. 2005) (finding that a child was in the parent’s “actual physical custody” where the child lived with the parent and no one disputed the parent’s custody); *Matter of M-*, 3 I&N Dec. 850, 856 (BIA 1950) (holding that the parent had “actual uncontested custody” of a child where the parent lived with the child, took care of the child, and the other parent consented to his arrangement).

The Applicant’s NOID response includes copies of her mother’s 2013-2018 federal income tax returns, which indicate that during that time period she lived with her mother and siblings in Florida.

In addition, the Applicant's health care provider confirms in a letter dated in January 2019 that according to their records the Applicant has been living at the same address as her mother since 2012, and the mother brought her to all medical appointments. These documents are sufficient to show that the Applicant has satisfied the physical custody condition in section 320(a)(3) of the Act through actual residence with her mother in the United States.

B. Legal Custody

Nevertheless, the Applicant has not established that she meets the legal custody requirement under the same section.

The Applicant represented on her Form N-600 that her parents are divorced. The regulation at 8 C.F.R. § 320.1(2) provides that if the child's parents are divorced, 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* (emphasis added). USCIS will also consider a U.S. citizen parent who has been awarded "joint custody," to have legal custody of a child. *Id.* The Applicant has the burden of proof to establish that her parents' marriage was legally terminated and that her mother was granted legal custody pursuant to the laws of Cuba. *See* 8 C.F.R. § 320.3(b)(1)(iii) and (vi) (providing that an applicant must provide proof of termination of any previous marriage of each parent and documentation of legal custody).

To establish that her mother had legal custody, the Applicant submitted a copy of a Divorce Judgment Certificate, issued by a municipal court in [REDACTED], Cuba, in [REDACTED] 2018. The certificate indicates that the Applicant's parents were divorced in [REDACTED] 2006, the court placed her and her sibling in the mother's care, and awarded joint legal custody to both parents. In our NOID, we explained that this certificate from the municipal court was insufficient to establish the legality of the parents' divorce under Cuban law. Specifically, the Law Library of Congress indicated in a legal opinion about divorce law in Cuba¹ that since 1986, Cuban courts have been required to submit to Cuba's Civil Registry, which is administrated by the Ministry of Justice, copies of judgements pertaining to family matters, including divorces, which modify the civil status of the parties involved in such proceedings. According to this opinion, a person's civil status does not change under Cuban law until the matter decided by a Cuban court is registered with the Civil Registry.² Accordingly, we notified the Applicant through the NOID that because she had not provided a divorce certificate issued by the Cuban Civil Registry we were unable to determine whether her parents were legally divorced in Cuba and, thus, whether the joint custody award in the court's judgment was sufficient to meet the regulatory presumption that her mother had legal custody for derivative citizenship purposes.

The Applicant does not address this issue in her response to our NOID, nor does she submit any additional documents related to her parents' divorce in Cuba. As it appears that the court-issued divorce judgment is insufficient to establish the legality of a divorce in Cuba, and the Applicant offers

¹ The Library of Congress, Global Research Center, LL File No. 2017-014340.

² The U.S. Department of State's reciprocity schedule also reflects that divorce certificates must be obtained through the Ministry of Justice.

no evidence to show that the divorce was registered with the Cuban Civil Registry, Ministry of Justice, we conclude that the Applicant has not demonstrated her parents' status as divorced persons under Cuban law. While the regulations permit us to consider of "other actual factual circumstances" to find that the U.S. citizen parent has legal custody, the Applicant does not claim that such circumstances are present in her case. Consequently, she has not demonstrated that her mother had legal custody over her, as required under section 320(a)(3) of the Act.

III. CONCLUSION

The Applicant has not established residence in the legal custody of her U.S. citizen mother in the United States as a lawful permanent resident. She is therefore ineligible for a Certificate of Citizenship and her application remains denied.

ORDER: The appeal is dismissed.

Cite as *Matter of B-G-P-M-*, ID# 3119066 (AAO Apr. 2, 2019)