



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

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

MATTER OF M-J-

DATE: FEB. 21, 2019

APPEAL OF OAKLAND PARK, FLORIDA FIELD OFFICE DECISION

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

The Applicant, who was born abroad in 2000, seeks a Certificate of Citizenship indicating that she derived citizenship from her mother, a naturalized U.S. citizen. Immigration and Nationality Act section 320, 8 U.S.C. § 1431. Generally, to establish derivative U.S. citizenship after birth an individual who was born abroad 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 Oakland Park, Florida Field Office denied the application, concluding that the Applicant's delayed birth certificate was insufficient to establish a familial relationship between her and her U.S. citizen mother.

On appeal, the Applicant submits additional evidence and asserts that she has satisfied all conditions for derivative U.S. citizenship.

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

I. LAW

The Applicant was born to married parents in Bangladesh in [REDACTED] 2000. In May 2009, at the age of nine years, the Applicant was admitted to the United States as a lawful permanent resident with her parents. Her mother became a U.S. citizen through naturalization in July 2014, when the Applicant was 14 years old. The Applicant's father naturalized several days later.

To determine whether 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 2014. 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

As stated above, the last critical event giving rise to the Applicant’s claimed eligibility for derivative citizenship is her mother’s naturalization in 2014. At that time, the Applicant was under the age of 18 years and a lawful permanent resident, as required in sections 320(a)(2) and (3) of the Act. The issues we must decide, therefore, are (1) whether the Applicant has established a parent-child relationship with her mother and, if so, (2) whether she has satisfied the legal and physical custody requirements for derivative citizenship.

The record includes a copy of the Applicant’s delayed birth certificate, which shows that her parents registered her birth in Bangladesh in 2009. The Director determined that this certificate, issued nine years after the Applicant was born, was insufficient to establish the requisite familial relationship with her U.S. citizen mother and requested additional, contemporaneous birth-related documents. In response, the Applicant provided her parents’ marriage certificate and another copy of the previously-submitted 2009 birth certificate. The Director determined, however, that these documents were still insufficient to establish the claimed relationship and, thus, the Applicant’s eligibility to derive U.S. citizenship from her mother.

On appeal, the Applicant submits a copy of DNA test results, an affidavit from her mother, information about birth registration in Bangladesh, and family photographs. She explains that although her birth was registered late, she has demonstrated through other evidence that she is in fact her mother’s child. She further states that she also meets the remaining requirements under section 320 of the Act.

We have reviewed the entire record, including the new evidence, and find that it is sufficient to show that the Applicant satisfied all statutory conditions to derive U.S. citizenship from her mother.

A. Parent-Child Relationship

When filing a Form N-600, every applicant must submit a birth certificate or record issued and certified by a civil authority in the country of birth to establish, in part, the relationship with his or her U.S. citizen parent or parents.¹ To comply with this requirement, the Applicant submitted a birth certificate, which identifies both her parents, issued by the Bangladeshi civil authority when she was nine years old. In assessing whether an applicant has met his or her burden of proof in cases where a birth certificate is submitted to establish a family relationship we “we have been reluctant to accord delayed birth certificates the same weight we would give birth certificates issued at the time of birth” due to the potential for fraud. *Matter of Rehman*, 27 I&N Dec. 124, 126 (BIA 2017 (citing *Matter of Bueno*, 21 I&N Dec. 1029 (BIA 1997))). Such birth certificates must be therefore evaluated in light of the other evidence of record and the circumstances of the case to determine whether an applicant has submitted sufficient reliable evidence to demonstrate the claimed relationship by a preponderance of the evidence. *Id.*

Here, the preponderance of the evidence supports the Applicant’s and her mother’s parent-child relationship. In particular, the DNA test results show that the Applicant is her mother’s biological child, and the mother further attests to the relationship in her affidavit. The Applicant also submits family photographs taken over the years, and online articles explaining that prior to 2007 birth registration in Bangladesh was neither compulsory nor common because of inconsistent administrative procedures and lack of awareness of its importance. In view of this additional, reliable evidence, we find the Applicant has established the claimed parent-child relationship between herself and her U.S. citizen mother.

B. Legal Custody

We next consider whether the Applicant has been residing in the United States in her mother’s legal custody as a lawful permanent resident before turning 18 years of age, as required in section 320(a)(3) of the Act. The preponderance of the evidence in the record indicates that the Applicant has satisfied this requirement.

“Legal custody” refers to the responsibility for and authority over a child. 8 C.F.R. § 320.1. Legal custody is presumed where the child is residing with both natural parents who are married to each other and living in marital union. 8 C.F.R. § 320.1(1).

The Applicant represented on the Form N-600 that her parents have been married to each other since 1999, and a copy of their marriage certificate in the record supports this representation. In addition, the record shows that the Applicant has been residing with her parents in Florida when her mother naturalized and thereafter. Specifically, the Applicant mother represented in her own 2014 naturalization proceedings that she was married to the Applicant’s father, and that they lived together in Florida with their children, including the Applicant. Moreover, the Applicant’s parents

¹ *Form N-600 Instructions*, pg. 8, <https://www.uscis.gov/n-600>.

claimed her as their dependent child in household member in the 2017 federal income tax return they filed jointly as a married couple. The Florida address listed on this tax return matches the address on the Applicant's Florida driver's license issued in 2017. This evidence demonstrates that the Applicant has been residing in Florida with her parents, who are married to each other and living together, after she was admitted to the United States for lawful permanent residence and before she turned 18 years of age in [REDACTED] 2018. Thus, the presumption of the U.S. citizen mother's legal custody has been met.

C. Physical Custody

The same evidence is also sufficient to demonstrate that the Applicant has been residing in Florida in her mother's physical custody. 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). Here, the Applicant's state identification and tax records referenced above indicate that she has been living in Florida with her mother and father during the relevant period of time after the mother's naturalization and prior to the Applicant's 18th birthday. We conclude, therefore, that the Applicant has satisfied the physical custody requirement of section 320(a)(3) of the Act through actual residence with her mother and father.

III. CONCLUSION

The Applicant has demonstrated that she has a U.S. citizen mother, and that she has fulfilled all of the remaining conditions to derive U.S. citizenship before she was 18 years old. The Applicant is therefore eligible for a Certificate of Citizenship.

ORDER: The appeal is sustained.

Cite as *Matter of M-J-*, ID# 2937398 (AAO Feb. 21, 2019)