



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

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

In Re: 31415504

Date: APR. 17, 2024

Appeal of Brooklyn, New York Field Office Decision

Form N-600, Application for Certificate of Citizenship

The Applicant, who was born abroad in 1985, seeks a Certificate of Citizenship to reflect that she derived citizenship from her naturalized U.S. citizen father under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431. To establish derivative citizenship under that section of the Act, a person who was born abroad must show that they had at least one U.S. citizen parent and were 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 Brooklyn, New York Field Office denied the Form N-600, finding the evidence insufficient to establish that the Applicant was residing in the physical custody of her father after her father naturalized as a U.S. citizen in May 2001, and before she turned 18 years old in 2003.¹

On appeal, the Applicant submits additional documents, and reasserts eligibility.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

Although not defined in the statute and corresponding regulations, the Board of Immigration Appeals has interpreted the term "physical custody" in the context of derivative citizenship proceedings to mean actual residence with the parent. *See Matter of M-*, 3 I&N Dec. 850, 856 (BIA 1950).²

¹ The previously submitted evidence includes a copy of the father's 2001 U.S. individual income tax return listing a New York address and the Applicant as her father's dependent household member, as well as a notarized statement from the property owner confirming that the Applicant and her father were his tenants and lived together at that address from January 1997 through December 2001.

² We note that in the jurisdiction of the U.S. Court of Appeals for the Second Circuit, where these proceedings arise, a brief and temporary separation of the parent and child does not preclude a finding that the parent has physical custody of the child. *See Khalid v. Sessions*, 904 F.3d 129, 141 (2d Cir. 2018) (holding that a brief, temporary separation created by the child's pretrial juvenile detention did not prevent the child from satisfying the physical custody requirement).

The additional evidence on appeal includes the Applicant's 1999-2002 school record listing her address in New York, and her father as her parent. The Applicant also provides a copy of her father's 2003 Form W-2 Wage and Tax Statement with the same address. Lastly, the Applicant submits a copy of her U.S. passport issued to her by the U.S. Department of State in 2016.

Because it does not appear that the Director considered this supplemental evidence before forwarding the appeal to our office, and because the record reflects that the Applicant has been issued a U.S. passport, which remains valid,³ we will return the matter for the Director to look at the Applicant's citizenship claim anew.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

³ A valid U.S. passport issued to an individual as a citizen of the United States constitutes conclusive proof of that person's citizenship unless the passport is void on its face. *Matter of Villanueva*, 19 I&N Dec. 101, 103 (BIA 1984).