



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

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

MATTER OF M-Q-

DATE: OCT. 5, 2016

APPEAL OF SANTA ANA, CALIFORNIA FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Mexico, seeks a Certificate of Citizenship. *See* Immigration and Nationality Act (the Act) § 320, 8 U.S.C. § 1431. An individual born outside the United States who acquired U.S. citizenship at birth, or 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 Field Office Director, Santa Ana, California, denied the application. The Director concluded that the Applicant was not eligible to derive U.S. citizenship from her adoptive father, because she did not establish that she was a lawful permanent resident of the United States.¹

The matter is now before us on appeal. On appeal, the Applicant submits an additional document relating to her adoption, and a statement from her adoptive father, in which he claims that the Applicant meets the requirements of section 320 of the Act relating to derivative citizenship of adopted children.

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

¹ The Director also considered the Applicant's eligibility for derivative citizenship under section 320 of the Act as in effect prior to Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (2000), which provided that a child born outside the United States to one U.S. citizen and one foreign national parent becomes a U.S. citizen upon the non-citizen parent's naturalization, if the child resides in the United States pursuant to lawful admission for permanent residence while under the age of 18. The Director concluded that the Applicant did not qualify for derivative citizenship under former section 320 of the Act as neither her mother, nor her father was a U.S. citizen at the time of her birth. Because the Applicant does not contest this determination, and there is nothing in the record to suggest that the Director's determination was incorrect, we do not address the issue of derivative citizenship under former section 320 of the Act on appeal.

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I. LAW

The record reflects that the Applicant was born in Mexico on [REDACTED] to Mexican citizen parents who were not married. In February 2002, the Applicant entered the United States without inspection. Later that year, the Applicant's mother married a U.S. citizen, who is not the Applicant's biological father. The U.S. citizen stepfather subsequently adopted the Applicant and her older brother in [REDACTED] 2014. There is no evidence that the Applicant was admitted to the United States as a lawful permanent resident at any time following her 2002 entry into the United States without inspection, and before she turned 18 in [REDACTED]. Further, there is no evidence that the Applicant's mother is a U.S. citizen. The Applicant seeks Certificate of Citizenship indicating that she derived U.S. citizenship upon adoption by her U.S. citizen stepfather.

The applicable law for derivative citizenship purposes is "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). In the present matter, the Applicant turned 18 on [REDACTED]. Accordingly, section 320 of the Act, as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (CCA), which was in effect in 2016, applies to her case.

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.
- (b) Subsection (a) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(B)(1).

Because the Applicant was adopted by a U.S. citizen, she falls under the provisions of section 320(b) of the Act. Therefore, the Applicant must also establish that she meets the requirements applicable to adopted children under section 101(b)(1) of the Act, 8 U.S.C. § 1101(b)(1), which provides, in pertinent part:

The term "child" means an unmarried person under twenty-one years of age who is-

...

(E) (i) a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years . . . or

(ii) subject to the same proviso as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) or subparagraph (F)(i); (II) was adopted by the adoptive parent or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), except that the child was adopted while under the age of 18 years. . . .

II. ANALYSIS

The issue is whether the Applicant has demonstrated that she satisfied the requirements of section 320 of the Act to derive U.S. citizenship from her adoptive U.S. citizen father.

The Director concluded that the Applicant did not derive citizenship under section 320 of the Act because she was not a lawful permanent resident. The Applicant does not make any claims regarding this determination on appeal. Instead, she submits a copy of an adoption request her stepfather filed in 2007, and states that she meets the criteria set forth in section 320 of the Act as they relate to derivative citizenship of adopted children.

Upon review of the entire record, which includes the Applicant's immigration forms, birth, marriage, and adoption documents, we conclude that the Applicant has not established that she resided in the United States pursuant to a lawful admission for permanent residence. In addition, we conclude that the Applicant does not meet the definition of a "child" under section 101(b)(1) of the Act, because she was adopted by her father after the age of 16. We find that for these reasons the Applicant is ineligible to derive citizenship from her adoptive U.S. citizen father under section 320 of the Act.

A. Lawful Admission to the United States for Permanent Residence

To establish derivative citizenship under section 320 of the Act, the Applicant must demonstrate that she has at least one U.S. citizen parent, either by birth or naturalization, and that she was residing in that parent's legal and physical custody pursuant to lawful admission to the United States for permanent residence and before she turned 18. The term "lawfully admitted for permanent residence" means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed. Section 101(a)(20) of the Act, 8 U.S.C. § 1101(a)(20). Generally, a person is admitted to the United States for permanent residence when the person adjusts status in the United States to that of a lawful permanent resident, or when the person is inspected and admitted to the United States with an immigrant visa at a port of entry. *See* 7 USCIS Policy Manual A.1(A), <https://www.uscis.gov/policymanual>.

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The Applicant represented on the Form N-600, Application for Certificate of Citizenship, that she arrived in the United States at [REDACTED] California, in [REDACTED] 2002. On the Form I-821D, Consideration of Deferred Action for Childhood Arrivals, she filed in 2013, the Applicant indicated that she did not have lawful status in the United States. The Applicant has not submitted evidence, such as a copy of Form I-551, Permanent Resident Card, or a passport admission stamp, to show that she was lawfully admitted to the United States for permanent residence. Further, U.S. Citizenship and Immigration (USCIS) records do not reflect that the Applicant was admitted to the United States as an immigrant, or that her status was adjusted to that of a lawful permanent resident at any time. Accordingly we conclude that the Applicant has not shown she was residing in the United States pursuant to a lawful admission for permanent residence before she turned 18 in [REDACTED] as required by section 320(a)(3) of the Act.²

B. Requirements of Section 320 of the Act Pertaining to Adopted Children

Although not addressed by the Director, we will also consider whether the Applicant has demonstrated that she met the section 320 of the Act requirements applicable to adopted children. As stated above, pursuant to section 320(b) of the Act, the Applicant must demonstrate that she was adopted by her U.S. citizen stepfather while she was under the age of 16 or, while under the age of 18, if she has a sibling who was adopted by the same parent before the age 16. *See* sections 101(b)(1)(E)(i), (ii) of the Act, *supra*. The Applicant's adoption decree shows that she was legally adopted by her stepfather on [REDACTED] 2014, *after* her 16th birthday on [REDACTED]. The adoption documents indicate that the Applicant has an older sibling, born in [REDACTED] who was adopted by the Applicant's stepfather at the same time. Because the Applicant's sibling was over 16 at the time of the adoption, the Applicant does not qualify for the age exception provision in section 101(b)(1)(E)(ii) of the Act. While the Applicant submits on appeal a copy of an adoption request document dated in [REDACTED] 2007, the adoption order issued by the California, [REDACTED] Superior Court shows that the Applicant's adoption was not final until [REDACTED] 2014. Because the Applicant was over 16 at that time, she does not meet the definition of an adopted child under section 101(b)(1)(E) of the Act, and is therefore ineligible to derive U.S. citizenship from her adoptive father under section 320 of the Act.

Having determined that the Applicant is statutorily ineligible to derive citizenship from her adoptive U.S. citizen father for the reasons discussed above, we do not address whether the Applicant has satisfied the remaining requirements for derivative citizenship under section 320 of the Act.

² We acknowledge that in [REDACTED] 2014 USCIS granted the Applicant's request for deferred action on childhood arrivals (DACA), and the Applicant is authorized to remain in the United States at this time. However, a deferred action grant only prevents the Applicant's removal from the United States and authorizes her employment in the United States for a specified period, unless terminated. It does not provide a lawful status, and it does not allow the Applicant to reside in the United States permanently.

III. CONCLUSION

It is the Applicant's burden to establish the claimed citizenship by a preponderance of the evidence. Section 341(a) of the Act, 8 U.S.C. § 1452(a); 8 C.F.R. § 341.2(c). Here, that burden has not been met, as the Applicant has not demonstrated that she was residing in the United States pursuant to lawful admission for permanent residence, or that she met the requirements for derivative citizenship applicable to adopted children.

ORDER: The appeal is dismissed.

Cite as *Matter of M-Q-*, ID# 11478 (AAO Oct. 5, 2016)