



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

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

In Re: 29648461

Date: DEC. 8, 2023

Appeal of Newark, New Jersey Field Office Decision

Form N-600, Application for Certificate of Citizenship

The Applicant seeks a Certificate of Citizenship to reflect that she derived citizenship from her naturalized U.S. citizen mother pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431. Generally, to establish derivative citizenship under that section of the Act an individual who was born abroad 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 Newark, New Jersey Field Office denied the Form N-600, concluding that the Applicant did not establish she was residing in her mother's legal custody in the United States in part because the Applicant did not respond to the Director's request for evidence.

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.

The regulation at 8 C.F.R. § 320.1 defines the term "legal custody" in section 320(a)(3) of the Act as "responsibility for and authority over a child." The regulation provides further that U.S. Citizenship and Immigration Services (USCIS) will presume that a U.S. citizen parent has legal custody of a child, and will recognize that U.S. citizen parent as having lawful authority over the child, absent evidence to the contrary, in the case of a biological child who resides with both natural parents who are married to each other, living in marital union, and not separated. 8 C.F.R. § 320.1(i). Nevertheless, USCIS may consider other factual circumstances to find that a U.S. citizen parent has legal custody for purposes of section 320 of the Act. 8 C.F.R. § 320.1(2).

The Director determined that the Applicant had not provided sufficient evidence that she was residing in the legal and physical custody of her mother at the time of her naturalization and sent a request for evidence in August 2021. When no response was received the Director issued a second request for evidence in April 2022. That letter was returned as undeliverable by the U.S. Postal Service. The Director denied the application stating that the Applicant had not provided sufficient evidence to

establish that she was residing in the legal and physical custody of her mother. On appeal, the Applicant provides evidence that she submitted a request for address change prior to the request for evidence. In addition, the Applicant has provided her school transcript as evidence she was residing with her mother at the time of her mother's naturalization.

Because the record now includes evidence concerning the Applicant's legal and physical custody which the Director has not yet reviewed, and because the record reflects that in 2019 the U.S. Department of State issued a U.S. passport to the Applicant,¹ we will return the matter for the Director to consider this additional evidence and to enter a new decision accordingly.

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

¹ 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).