U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21123978

Date: APR. 22, 2022

Appeal of Dallas, Texas Field Office Decision

Form N-600K, Application for Citizenship and Issuance of Certificate Under Section 322

The Applicant's mother seeks a Certificate of Citizenship on behalf of the Applicant, to reflect that he derived U.S. citizenship through his mother under section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The Director of the Dallas, Texas Field Office denied the Form N-600K, concluding that the Applicant had not provided requested evidence and therefore had not shown that he had satisfied the residing abroad in the legal and physical custody of the U.S. citizen parent condition at section 322(a)(4) of the Act.

On appeal, the Applicant submits additional evidence and claims that he did not receive the Director's prior notice of intent to deny (NOID) the Form N-600K. He asserts that his permanent and current address is in Australia and submits additional evidence in support of his appeal.

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

I. LAW

The record reflects that the Applicant was born out of wedlock in Cameroon in [redacted] 2003, to parents who were citizens of Cameroon. The Applicant indicated on the Form N-600K that he currently resides in the United States with his mother. As he claims that his father died in Cameroon in 2004, the Applicant claims U.S. citizenship under section 322 of the Act solely through his mother, who became a naturalized U.S. citizen in August 2021.

Section 322 of the Act (as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), applies to children who were born and reside outside of the United States, and states, in pertinent part that:

> (a) A parent who is a citizen of the United States . . . may apply for naturalization on behalf of a child born outside of the United States who has not acquired citizenship automatically under section 320. The Attorney General [now Secretary of the Department of Homeland Security (Secretary)] shall issue a certificate of citizenship to

such applicant upon proof, to the satisfaction of the [Secretary], that the following conditions have been fulfilled:

> (1) At least one parent . . . is a citizen of the United States, whether by birth or naturalization.
>
> (2) The United States citizen parent--
>
> > (A) has . . . been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years; or
> >
> > (B) has . . . a citizen parent who has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years.
>
> (3) The child is under the age of eighteen years.
>
> (4) The child is residing outside of the United States in the legal and physical custody of the [citizen parent] . . . .
>
> (5) The child is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.

(b) Upon approval of the application . . . [and] upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this chapter of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the Attorney General [Secretary] with a certificate of citizenship.

The regulation at 8 C.F.R. § 322.1 provides that for section 322 of the Act purposes, the term "child" means a person who meets the requirements of section 101(c) of the Act; 8 U.S.C. § 1101(c). Section 101(c) of the Act defines the term "child" in pertinent part to mean "an unmarried person under twenty-one years of age." The child must have either a biological or legal adoptive relationship with the claimed U.S. citizen parent. *See Matter of Guzman-Gomez*, 24 I&N Dec. 824, 826 (BIA 2009).

Because the Applicant was born abroad, he is presumed to be a foreign national and bears the burden of establishing his claim to U.S. citizenship by a preponderance of credible evidence. *See Matter of Baires*, 24 I&N Dec. 467, 468 (BIA 2008). The "preponderance of the evidence" standard requires the record to demonstrate that the Applicant's claim is "probably true," based on the specific facts of his case. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Moreover, an applicant must

establish eligibility at the time of filing and must continue to be eligible through adjudication. 8 C.F.R. § 103.2(b)(1).

II. ANALYSIS

The Director denied the Form N-600K, concluding that the Applicant had not shown that he is residing *outside the United States* in the legal and physical custody of his U.S. citizen mother.

The Applicant initially established that he meets some of the requirements for issuance of a Certificate of Citizenship under section 322 of the Act. A 2021 Certificate of Naturalization shows that the Applicant's mother is a naturalized U.S. citizen. Birth certificates show the parent-child relationship between the Applicant and his mother, that he was born abroad, and demonstrate that the Applicant was under 18 years of age and unmarried at the time he filed the Form N-600K. The Applicant therefore qualified as his mother's "child" under section 101(c) of the Act at the time of filing the Form N-600K, and he has satisfied section 322(a)(1) and (a)(3) of the Act conditions.

Other evidence relating to the Applicant's mother's physical presence in the United States includes her August 2021 Certificate of Naturalization and a copy of her October 2021 Certificate of Nurse's Aide for the State of Texas; however, the Director did not make a determination as to whether or not the record was sufficient to find that the Applicant's U.S. citizen mother was physically present in the United States for not less than five years, at least two of which were after turning fourteen years of age, as required by section 322(a)(2)(A) of the Act. [1] Instead, the sole issue before us is whether or not the Applicant showed that he was residing abroad in the legal and physical custody of his U.S. citizen mother in order to satisfy the conditions at section 322(a)(4) of the Act.

Section 101(a)(33) of the Act defines the term "residence" as "the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent."

On the Form N-600K, filed in October 2021, the Applicant stated that he was residing with his mother in the United States, and listing a [redacted] Texas residential street address. His mother's 2021 Certificate of Naturalization and 2021 Texas Certificate of Nurse's Aide show that she is residing in the United States. The Applicant included a copy of his May 2021 Texas High School diploma, a copy of his Texas provisional driver's license listing the same residential address in [redacted] Texas and issued in July 2021. The record also shows that the Applicant was admitted into the United States as a lawful permanent resident in May 2015, and in May 2017, he was issued a replacement copy of his permanent resident card to a [redacted] Texas address. The Director ultimately denied the Form N-600K, concluding that because the record showed that the Applicant was residing in Texas when he filed the Form N-600K, he had not provided sufficient evidence to demonstrate that he was residing *outside the United States* in the legal and physical custody of his U.S. citizen mother, as required. Section 322(a)(4) of the Act; 8 C.F.R. § 322.2(a)(4).

[1] We reserve this issue. Our reservation of the issue is not a stipulation that the Applicant has overcome this additional possibility for denial, and should not be construed as such. Rather, there is no constructive purpose to addressing the additional ground here, because as shown below, it would not change the outcome of the appeal.

On appeal, the Applicant's mother states that she mistakenly filed a Form N-600K instead of a Form N-600, Application for Certificate of Citizenship, which must be filed when an applicant resides within the United States.[2] Moreover, the Applicant's mother confirms that the Applicant has continuously resided within the United States since he entered the United States in June 2015 until the present, with no travel outside the United States. Finally, the Applicant lists his current residential address in [redacted], Texas, on the appeal Form I-290B. As a consequence, the Applicant has not claimed or shown by a preponderance of the evidence that his principal actual dwelling place was outside of the United States when he filed the Form N-600K in October 2021 and thereafter such that he is residing *outside of the United States* in the legal and physical custody of his mother, as required under section 322(a)(4) of the Act. As such, the Applicant has not shown he is eligible for a Certificate of Citizenship under section 322 of the Act.

ORDER: The appeal is dismissed.

[2] The denial of the Applicant's Form N-600K does not preclude filing of a Form N-600, Application for Certificate of Citizenship.