U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 22260443

Date: APR. 26, 2022

Appeal of Chicago, Illinois Field Office Decision

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

The Applicant's grandfather seeks a Certificate of Citizenship on behalf of the Applicant, to reflect that the Applicant 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 Chicago, Illinois Field Office denied the Form N-600K, concluding that the Applicant 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 claims that his permanent address is in Italy and that he is only in the United States because he believed that he was being scheduled for an interview in the United States with U.S. Citizenship and Immigration Services (USCIS). The Applicant 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 in Italy in [redacted] 2004, to a U.S. citizen mother and a foreign national father, who had married in 1995. The Applicant indicated on the Form N-600K that he currently resides in Italy with his parents and claims U.S. citizenship under section 322 of the Act through his mother, attesting that he satisfied U.S. physical presence conditions through his maternal grandfather.

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.
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> (2) The United States citizen parent--
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> > (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
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> > (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.
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> (3) The child is under the age of eighteen years.
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> (4) The child is residing outside of the United States in the legal and physical custody of the [citizen parent] . . . .
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> (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 1973 Illinois birth certificate and a U.S. passport show that the Applicant's mother is a U.S. citizen. Birth and marriage certificates show the parent-child relationship between the Applicant and his mother (and father), that he was born abroad, and demonstrate that the Applicant is under 18 years of age and is unmarried. The Applicant therefore qualifies as his mother's "child" under section 101(c) of the Act, and he has satisfied sections 322(a)(1) and (a)(3) of the Act conditions.

Other evidence relating to the Applicant's grandfather's physical presence in the United States includes the grandfather's 1991 Certificate of Naturalization, documents showing that the grandfather had purchased a home in Illinois in 1994, and Internal Review Service (IRS) Forms 1040 and Illinois state tax returns for the years 2015 through 2020. Based on this evidence, the Director concluded, and we agree, that the record was sufficient to find that the Applicant's U.S. citizen grandfather 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. Therefore 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 February 2020, the Applicant stated that he was residing abroad with his parents in Italy. In a notice of intent to deny (NOID), the Director advised the Applicant that U.S. Citizenship and Immigration Services (USCIS) records show that the Applicant had entered the United States in July 2020 and had not departed. Consequently, in the NOID, the Director asked the Applicant for additional evidence to show that he was in fact residing abroad in the legal and physical custody of his mother, as claimed on the Form N-600K. In his response to the NOID, the Applicant stated that he was "residing in the United States due to the original citizenship [interview] date being July 15, 2020," and claimed that the original date had been delayed due to the COVID-19 pandemic. The Applicant suggested three other dates that he could be available for interview in 2021. The Director ultimately denied the Form N-600K, stating that USCIS records did not show that the Applicant had ever been scheduled for interview and concluding that the record was not sufficient to show that the Applicant was still residing *outside the United States* in the legal and physical custody of his U.S. citizen mother, as required.

On appeal, the Applicant states that he had travelled to the United States because he had requested a July 2020 date for an interview with USCIS on the Form N-600K, and had not been told that the interview was not scheduled. The Applicant claims that he had contacted USCIS on multiple

occasions to request an interview, had been advised that USCIS would review his case, and provided copies of case status inquiries that his mother had submitted to USCIS asking about the status of his Form N-600K adjudication and requesting additional interview dates.

The instructions to the Form N-600K indicate that an Applicant should request preferred interview dates and that USCIS will consider them. However, the instructions also state that "USCIS . . . [will] schedule the interview and send a timely appointment notice to the foreign address . . . [but] USCIS will not schedule an interview date until it has determined that the Form N-600K is complete."[1] Finally, the instructions provide the following admonition that an Applicant *should not* travel to the United States without a scheduled interview:

> **NOTE**: USCIS advises you to wait for the appointment notice from USCIS before traveling to the United States with the understanding that USCIS cannot assist in obtaining a visa to enter the United States. USCIS may not be able to schedule the interview for the requested date.

The statements that the Applicant and his mother submitted on appeal confirm that the Applicant was residing with his mother in Italy in February 2020, and that he travelled to the United States in July 2020 without a scheduled interview or approval of his Form N-600K. Although he claims that he is in the United States because he is waiting for an interview, the e-mails he provided from his mother to USCIS include additional information confirming that the Applicant had been enrolled in high school since 2020, and that she obtained employment while they have been in the United States. Consequently, on appeal, the Applicant confirms that he travelled to the United States without a scheduled interview with USCIS and that he has been residing in the United States since July 2020. The additional evidence that the Applicant included on appeal supports this conclusion. As a consequence, the Applicant has not shown by a preponderance of the evidence that his principal actual dwelling place is outside of the United States such that he is residing *outside of the United States* in the physical custody of his mother for purposes of section 322(a)(4) of the Act.[2]

III. CONCLUSION

The Applicant has not shown that he resides *outside of the United States* in his U.S. citizen mother's physical custody, 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.

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[1] Form N-600K, Instructions for Application for Citizenship and Issuance of Certificate under Section 322, *When to File*, p. 13. (https://www.uscis.gov/forms/all-forms).

[2] We reserve a decision on whether or not the Applicant is also residing in his mother's legal custody. 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 as a decision on this issue would not change the outcome of the appeal.