U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27402245

Date: AUG. 2, 2023

Appeal of San Jose, California Field Office Decision

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

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

The Director of the San Jose, California Field Office denied the Form N-600K, concluding that the Applicant was ineligible for a Certificate of Citizenship under section 322 of the Act because he was a lawful permanent resident. The matter is now before us on appeal. 8 C.F.R. § 103.3.

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 remand the matter.

I. LAW

The record reflects that the Applicant was born in South Korea in [redacted] 2005, to married foreign national parents. A copy of the Applicant's permanent resident card shows that he became a lawful permanent resident of the United States in 2015. A Certificate of Naturalization shows that the Applicant's father became a naturalized U.S. citizen in June 2021. The Applicant indicated on the Form N-600K that he currently resides in South Korea with his parents. He claims U.S. citizenship under section 322 of the Act solely through his naturalized U.S. citizen father.

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 [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
> >
> > . . . .
>
> (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.

Regulations at 8 C.F.R. § 322.1 provide 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 and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere[.]" 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. at 369.

The issue on appeal is whether the Applicant is precluded from satisfying the temporary presence pursuant to lawful admission conditions at section 322(a)(5) of the Act because he is a lawful

permanent resident. In the denial, the Director concluded that he cannot meet this requirement because the statute requires that the Applicant be temporarily present and because the Applicant has been granted status as a lawful permanent resident, he is not eligible to file a Form N-600K. However, the Director appears to be conflating the temporary *presence* condition at section 322(a)(5) of the Act with temporary *status*. Section 322(a)(5) of the Act refers only to temporary presence, which may be in any lawful status. *See* 12 *USCIS Policy Manual* H.5(D)(1), https://www.uscis.gov/policymanual. Thus, the Applicant may prospectively satisfy the temporary presence condition at section 322(a)(5) of the Act.

Consequently, the Applicant has overcome the Director's conclusion that the Form N-600K is unapprovable under section 322(a)(5) because the Applicant is a lawful permanent resident. It remains, however, that section 322(a)(5) of the Act and the related regulation at 8 C.F.R. § 322.4 provide that the U.S. citizen parent and the child must appear in person before a U.S. Citizenship and Immigration Services Officer for examination on the Form N-600K under section 322 of the Act.

Because the record indicates that the Applicant and his father are currently abroad, and we have determined the Director's grounds for denial have been overcome, we will remand the matter to the Director to schedule an interview on the Form N-600K.

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