U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23650867

Date: FEB. 7, 2023

Appeal of Santa Ana, California Field Office Decision

Form N-600, Application for a Certificate of Citizenship

The Applicant seeks a Certificate of Citizenship to reflect that she derived U.S. citizenship from her adoptive mother under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431. Section 320 of the Act provides, in relevant part, that to derive U.S. citizenship children born abroad must be under the age of 18 years, have at least one U.S. citizen parent, and reside in the United States in that parent's legal and physical custody pursuant to a lawful admission for permanent residence.

The Director of the Santa Ana, California Field Office denied the Form N-600, concluding that the Applicant did not establish, as required that her admission to the United States for permanent residence was lawful. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Applicant submits a brief and reasserts eligibility.

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 record reflects that the Applicant was born abroad on [redacted], 2012, to a noncitizen mother and an unknown father; she was adopted there three days later.[1] In [redacted] 2013, the Applicant's adoptive mother married a lawful permanent resident of the United States, who in December 2013 filed a Form I-130, Petition for Alien Relative (immigrant visa petition) to classify the Applicant as his child for immigration purposes. The petition was approved affording the Applicant an immigrant classification as a child of a lawful permanent resident (F-22). The Applicant's stepfather became a U.S. citizen through naturalization and in December 2014, at the age of two years the Applicant was admitted to the United States as a lawful permanent resident child of a U.S. citizen on a conditional basis (CR2).[2] Her adoptive mother naturalized as a U.S. citizen in 2021, when the Applicant was nine years old.

[1] The Director found the evidence sufficient to establish that the adoption was full, final, and complete, as required.

[2] U.S. Citizenship and Immigration Services (USCIS) removed the conditions on the Applicant's residence in 2018.

The Director determined based on those facts that the Applicant was not lawfully admitted to the United States for permanent residence, because she did not qualify as a "child" for immigration purposes, as defined in section 101(b)(1)(E) of the Act, 8 U.S.C. § 1101(b)(1),[3] when her stepfather filed the immigrant visa petition on her behalf, and when the petition was approved. Specifically, the Director found that because the Applicant was adopted in March 2012, she did not satisfy the two-year residence with and in her adoptive mother's legal custody condition in section 101(b)(1)(E) of the Act at the time of the visa petition filing (in December 2013) and approval (in March 2014). The Director concluded that the Applicant therefore was not residing in the United States pursuant to a lawful admission for permanent residence, and as such was ineligible to derive citizenship from her adoptive mother.

The term "lawfully admitted for permanent residence" as used in section 320(a)(3) of the Act 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). If at the time a noncitizen is accorded permanent resident status they are not entitled to such status, the noncitizen cannot be considered lawfully admitted for permanent residence. *See Matter of Koloamatangi*, 23 I&N Dec. 548, 550 (BIA 2003). Furthermore, "[a]dmission is not lawful if it is regular only in form. The term 'lawfully' denotes compliance with substantive legal requirements, not mere procedural regularity." *Monet v. INS*, 791 F.2d 752, 753 (9th Cir. 1986) (citing *Matter of Longstaff*, 716 F.2d 1439, 1441 (5th Cir. 1983)).

Nevertheless, because USCIS records indicate that in 2021 the U.S. Department of State issued the Applicant a U.S. passport, which remains valid at this time[4] we will remand the matter to the Director to look at the Applicant's citizenship claim anew.

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

[3] Section 101(b)(1), defines the term "child," in relevant part as "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"

[4] 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).