U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23478607

Date: JAN. 12, 2023

Appeal of Houston, Texas Field Office Decision

Form N-600K, Application for a Certificate of Citizenship 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 Houston, Texas Field Office initially denied the Form N-600K for abandonment. The Director subsequently reopened the matter on motion and again denied the Form N-600K, concluding that the Applicant had not shown that: (1) his claimed U.S. citizen father had been physically present in the United States for at least 5 years, not less than 2 of which were after the age of 14 years; and (2) he had satisfied the residing abroad in the legal and physical custody of a U.S. citizen parent conditions at section 322(a)(4) of the Act. 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 dismiss the appeal.

I. LAW

The record reflects that the Applicant was born in Nigeria in [redacted] 2005. He claims that he was adopted by married, naturalized citizens of the United States. The Applicant indicated on the Form N-600K that he currently resides in Nigeria. He initially claimed U.S. citizenship under section 322 of the Act through a naturalized U.S. citizen father. On appeal, the Applicant indicates that he also is eligible for a Certificate of Citizenship through a naturalized U.S. citizen mother.

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.

(c) Subsections (a) and (b) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1), [8 U.S.C. § 1101(b)(1)].

Because the Applicant claims to have been adopted by the two U.S. citizens he listed on the Form N-600K, he also must establish that he meets the requirements applicable to adopted children under section 101(b)(1) of the Act, which provides in relevant part that the term "child" means "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." Section 101(b)(1)(E)(i) of the Act; 8 C.F.R. § 322.1.

In addition, because the Applicant was born abroad, he is presumed to be a noncitizen 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

Although not specifically addressed by the Director, the Applicant has not shown that he has a U.S. citizen parent. The Applicant claims on the Form N-600K to have been adopted by two naturalized U.S citizens, a man named V-A-E- and a woman named P-E-; however, the evidence in the record is inconsistent with this claim. The Applicant's Nigerian adoption documents show that he was adopted by a man named O-V-E- and a woman who is referred to only as "Mrs." O-V-E-. Moreover, the Applicant provided a 2008 letter from his school in Nigeria which listed his parents as "[redacted]" P-O-V-E-. The record does not contain sufficient evidence to show that the U.S. citizens named V-A-E- and P-E- are also his adoptive parents, [redacted] O-V-E. Consequently, the Applicant has not first shown by a preponderance of the evidence that he has a U.S. citizen parent as required under section 322(a)(1) of the Act through demonstrating that he has a biological or legal adoptive relationship with a U.S. citizen parent. 8 C.F.R. § 322.1; *Matter of Guzman-Gomez*, 24 I&N Dec. at 826.

Even if the Applicant had shown that he is the child of a U.S. citizen parent, he has not overcome the Director's conclusion that the Applicant did not show that his father, V-A-E-, was physically present in the United States for a period of at least 5 years, no less than 2 of which were after V-A-E- turned 14 years of age, as required by section 322(a)(2)(A) of the Act.[1]

The Applicant stated on the Form N-600K that V-A-E- had been physically present in the United States since September 2017 to the "present" May 2021 filing date of the Form N-600K, listed V-A-E-'s U.S. residential address in [redacted] Texas, and provided an April 2021 letter from V-A-E-'s U.S. employer stating that V-A-E- had worked for the company as a nurse since June 2017. The Director denied the Form N-600K, concluding that the record was not sufficient to establish that V-A-E- was physically present in the United States for not less than 5 years, at least 2 of which were after turning 14 years of age, as required by section 322(a)(2)(A) of the Act.

On appeal, the Applicant does not include additional evidence regarding V-A-E-'s U.S. physical presence for the minimum period required under the statute, claiming that the evidence of record before the Director was sufficient to demonstrate that V-A-E- has the requisite 5 years of physical presence in the United States, no less than 2 of which were after the age of 14 years. However, both

[1] Because our findings here, i.e., that the Applicant has not shown that he: (1) he is the child of a U.S. citizen parent; and (2) satisfied the physical presence conditions of section 322(a)(4) of the Act through his father, are dispositive of this appeal, we decline to reach and hereby reserve the remaining issues of whether he separately satisfied the residing in the legal and physical custody of a U.S. citizen parent conditions at section 322(a)(4) of the Act. In addition, although not addressed by the Director, we reserve a determination on whether the Applicant separately provided sufficient evidence to show that he satisfied the *residing abroad* condition at section 332(a)(4) of the Act. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

V-A-E-'s employment letter and the Applicant's claims on the Form N-600K indicate that V-A-E- was physically present in the United States from June 2017 to the May 2021 filing date of the application, which is period of less than four years of physical presence. Consequently, even if the Applicant had shown that V-A-E- is his father, the Applicant's evidence here is not sufficient to show that when he filed the Form N-600K, V-A-E- had the minimum 5 years of physical presence in the United States, no less than 2 of which were after the father turned 14 years of age, in accordance with the relevant section 322(a)(2)(A) of the Act conditions.

III. CONCLUSION

The Applicant has not shown that he is the child of a U.S. citizen parent, as required to satisfy section 322(a)(1) of the Act conditions. Moreover, even if he had shown that he was the child of the naturalized U.S. citizen whom he claims is his father, the Applicant has not shown that the naturalized U.S. citizen had the requisite 5 years of physical presence in the United States, no less than 2 of which were after turning 14 years of age as required under section 322(a)(2) of the Act conditions. 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.