U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25840036

Date: MAY 19, 2023

Appeal of Newark, New Jersey 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 his father under section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The Director of the Newark, New Jersey Field Office denied the application, concluding that the record did not establish that the Applicant's U.S. citizen grandparent was physically present in the United States for not less than five years, at least two of which were after turning the age of fourteen, as required under section 322(a)(2)(A) 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

The record reflects that the Applicant was born in Israel in [redacted] 2018, to a U.S. citizen father and a foreign national mother who married in 2017. The Applicant indicated on the Form N-600K that he currently resides in Israel with his parents and claims U.S. citizenship under section 322 of the Act through his father, attesting that he satisfies statutory U.S. physical presence conditions through his paternal grandmother.

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--
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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.
>
> (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] . . . .
>
> (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. at 376.

II. ANALYSIS

The Applicant initially established that he satisfied some of the conditions for issuance of a Certificate of Citizenship under section 322 of the Act. An Israeli birth certificate, a 1995 U.S. Department of State (DOS) certification of a Consular Report of Birth Abroad in Jerusalem for the Applicant's father, and U.S. passports for the Applicant's father and paternal grandmother show the father is a U.S. citizen who was born in Israel in 1995 to U.S. citizen parents.[1] Birth and marriage certificates show the biological parent-child relationship between the Applicant and his father (and mother) and demonstrate that the Applicant is under 18 years of age and is unmarried. The Applicant therefore qualifies as his U.S. citizen father's "child" under section 101(c) of the Act, and he has satisfied sections 322(a)(1) and (3) of the Act requirements.

The Applicant's father was born in and lives in Israel and the Applicant does not claim that his father has resided in the United States at any time. Consequently, the Applicant seeks to establish the physical presence requirement under section 322(a)(2) of the Act through his U.S. citizen grandmother (his father's mother), asserting that his grandmother 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.

The Applicant's initial evidence intended to show that his paternal U.S. citizen grandmother was physically present in the United States for at least five years, at least two of which were after she had turned 14 years of age in 1973, includes some school records, a graduation certificate, a work-issued employee identification card, and a work-related computer training diploma, all relating to the grandmother's school and work in the state of New York. However, the Director ultimately denied the Form N-600, explaining that the Applicant had not provided additional documents in response to several requests and that the initial documents provided were either illegible, lacked sufficient information to show that they related to the Applicant's paternal grandmother, or did not include information showing how much physical presence the grandmother had in the United States and when.

On appeal, the Applicant explains that he was affected by the COVID-19 pandemic and therefore had been unable to timely respond to the Director's requests with additional evidence. On appeal, he provides new evidence that includes transcripts from the grandmother's New York high school and community colleges and her 2021 U.S. social security earnings record. The documents provided on appeal, in addition to previously provided evidence, collectively show that the grandmother attended school in the state of New York from the Fall of 1969 through the Spring of 1977, and that she earned annual incomes ranging from approximately $8,967 to $25,500 while working in the United States from 1978 to 1982, and again during 1991. In particular, the school records contain information about how much actual physical presence the Applicant's maternal grandmother had accumulated in the United States during specific periods of time because they identify her and show that she was physically present for a total amount of no less than five years, at least two of which were after she turned 14 years of age in [redacted] 1973. Consequently, the Applicant has overcome the Director's conclusion that he did not satisfy the U.S. physical presence requirements under section 322(a)(2) of

[1] Although the father's report of consular birth abroad indicates that the Applicant's paternal grandfather was a U.S. citizen, the Applicant does not seek to show that he satisfies section 322(a)(2)(A) of the Act U.S. physical presence conditions through his grandfather.

the Act though his paternal grandmother. However, the matter is returned for the Director to determine whether the Applicant satisfied the remaining conditions at section 322 of the Act.

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