U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 27370115

Date: AUG. 25, 2023

Appeal of New York, New York Field Office Decision

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

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

The Director of the New York, New York Field Office denied the application, concluding that the Applicant had not established that she was residing outside of the United States in the legal and physical custody of her U.S. citizen parent for at least two years after her adoption. The Director also concluded that the Applicant had not established that her U.S. citizen parent had at least five years of physical presence in the United States, no less than two of which were after the age of 14 years. 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 Guyana in [redacted] 2009, and in [redacted] 2016, she was adopted by her U.S. citizen mother, S-B-, in Guyana. In 2017, S-B- was issued a Certificate of Citizenship to reflect that she had previously acquired U.S. citizenship in January 1993. The Form N-600K, filed in July 2019, reflects that the Applicant currently resides in Guyana and claims U.S. citizenship under section 322 of the Act solely through her mother, S-B-.

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--
> >
> > > (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.
> >
> > . . . .
> >
> > (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 was adopted by the U.S. citizen parent named on the Form N-600K, she also must establish that she 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, she is presumed to be a foreign national and bears the burden of establishing her 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 her case. *See Matter of Chawathe*, 25 I&N Dec. at 376. 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 Applicant initially established that she meets some of the requirements for issuance of a Certificate of Citizenship under section 322 of the Act. A copy of the mother's Guyanese birth certificate and Certificate of Naturalization show the mother became a U.S. citizen in January 1993. Birth certificates and a 2016 adoption order from Guyana show that the Applicant was born abroad in [redacted] 2009, legally adopted while under the age of 16 years in [redacted] 2016, remains under the age of 18 years and also demonstrate the parent-child relationship between the Applicant and her mother as well as the fact that the mother has had sole legal custody of the Applicant since at least the final adoption order. The Applicant claims that she is unmarried, and the record does not contradict her assertion. The Applicant therefore satisfies part of the definition of a "child" under section 101(c) of the Act, and she has satisfied sections 322(a)(1) and (a)(3) of the Act conditions. The issue before us is whether the Applicant established that her U.S. citizen parent has at least five years of physical presence in the United States, no less than two of which were after the age of 14 years, in order to satisfy the relevant conditions at section 322(a)(2)(A) of the Act.[1]

On the Form N-600K, filed in July 2019, the Applicant stated that her mother had numerous periods of physical presence in the United States, beginning with an initial, continuous period from December 1989 to July 1994, after which the Applicant claimed that her mother's U.S. physical presence consisted of shorter periods that ran from December 1998 until 2017. In an accompanying brief, the Applicant claims that her mother has a total of at least nine years of physical presence in the United States.

The remaining initial evidence regarding the mother's U.S. physical presence includes:

1. A 2014 Internal Revenue Service (IRS) Form 1040, U.S. Individual Tax Return, showing that the Applicant's mother listed a home address on [redacted] New York, declared that her occupation was "housewife – student," listed no wages, salaries, or tips, and claimed a student credit, listing her school as University [redacted].

2. A March 2015 letter from a leasing company stating that the Applicant's mother had resided in and paid rent for an apartment on [redacted] New York from September 2013 to March 2015.

[1] As will be discussed, our conclusion that the Applicant has not established that her U.S. citizen parent has satisfied the U.S. physical presence conditions of section 322(a)(2)(A) of the Act is dispositive of the appeal. As a consequence, we decline to reach and hereby reserve a decision on whether the Applicant: (1) is also residing in her mother's legal and physical custody under section 322(a)(4) of the Act; and (2) has resided with the adopting parent for at least two years, as required by section 101(b)(1)(E)(i) of the Act; 8 C.F.R. § 322.1. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (noting that "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).

3. An agreement for a March 2015 early termination of the two-year lease for an apartment on [redacted] New York that the Applicant's mother had initially rented through September 2015.

4. A lease agreement for an apartment on [redacted] New York from April 2015 to April 2016.

5. A January 2016 electric bill of $23.87 for 30 days of service for the residence on [redacted] The electric bill was issued to the Applicant's mother and listed her electric bill of approximately $159 for the prior year (2015).

6. An August 2016 statement from the Applicant's godmother who attested that, among other things, the Applicant's mother had residential addresses in [redacted] New York, without specifying any specific dates.

7. A University [redacted] diploma issued to the mother in 2017 and a partial transcript showing that she began a bachelor's degree program at the University [redacted] in the Fall of 2002 and completed her program approximately 15 years later in March 2017. (The transcript also indicates that the mother had graduated from an unspecified high school outside the United States in 1996.)

8. A personal statement from the Applicant's mother in which she claims that she had immigrated to the United States in 1988 when she was 10 years old and resided in Connecticut until 1993. Although the mother provides a list of the Connecticut schools she claims to have attended, she attests that she does not have physical evidence regarding her school attendance because she was a minor and was living with various family members and foster families. Although the Applicant's mother states that her father likely had some evidence of the mother's U.S. physical presence, he died in June 2003.

The other evidence submitted relates to the Applicant's and her mother's residence and physical presence in Guyana. The Director denied the Form N-600K, concluding that the record, including "testimony during the interview," was not sufficient to establish that the Applicant's mother had at least five years of physical presence in the United States, no less than 2 of which were after the age of 14 years, as required by section 322(a)(2)(A) of the Act.

On appeal, the Applicant contends that the Director's denial was erroneous and that the evidence demonstrates her mother has the requisite physical presence in the United States. In her brief, the Applicant claims that she does not have supporting evidence to show that her mother was present in the United States from 1988 (when the mother was approximately 10 years old) to around 1994 (when the mother was approximately 15 years of age).[2] Instead, the Applicant contends that her mother had previously provided an affidavit with reasons why such evidence was unavailable and therefore the Applicant's statements listing her mother's claimed periods of U.S. physical presence should be

[2] The Applicant stated on the Form N-600K that her mother left the United States in 1993, after graduating from middle school.

deemed sufficient. The Applicant also claims that the Director's decision is erroneous because it incorrectly referred to testimony during an interview whereas the Applicant and her mother have not been interviewed. The Applicant resubmits previously provided evidence and new evidence in the form of a partial copy of a 2015 IRS tax return and two employment letters as evidence regarding her mother's claimed U.S. physical presence.

As an initial matter, the record lacks evidence that the Applicant or her U.S. citizen parent were interviewed in connection with the Form N-600K; therefore, the Director's general reference to information stemming from an interview appears to be erroneous. However, the reference is without prejudice to the Director's decision because, as will be discussed, the Applicant otherwise has not established that her mother satisfied the U.S. physical presence conditions at section 322(a)(2)(A) of the Act.

First, the record is contradictory as to when the Applicant's mother was physically present in the United States. The Applicant stated on the Form N-600K that her mother was physically present in the United States for various periods of time, specifying that one period was from 1989 until 1994. However, in her initial statement, the mother asserted that she arrived in the United States in 1988 and remained through her graduation from eighth grade in 1993. The Applicant has not submitted evidence resolving the inconsistencies as to when her mother was physically present in the United States while attending school in Connecticut, claiming that relevant school records are no longer obtainable.

Further, although the 2014 IRS tax records show that the Applicant's mother listed a U.S. residential address in New York, she did not claim any U.S. wages, salary, or tips for that year. Similarly, the partial copy of the mother's 2015 IRS tax return does not reflect that the mother claimed to have U.S. wages, salary or tips; therefore, the tax records do not reflect that the mother was physically present in the United States during any specific dates in 2014 and 2015 based on evidence of U.S. employment. Although the mother declared herself to be a student at the University [redacted] on the 2014 and 2015 IRS tax returns, the University [redacted] address on the tax returns is for a location in Arizona whereas the mother has never claimed to have been physically present in Arizona.[3] Consequently, the information on the tax returns and University [redacted] records is not sufficient to establish that the Applicant's mother was physically present working or studying in New York (or Arizona) in the 2014 and 2015 tax years.

Moreover, in its letter, the leasing company asserted that the mother had resided at a property on [redacted] New York from September 2013 to March 2015. However, the Applicant's mother did not claim to have resided in the United States on a full-time basis during that period and the Form N-600K lists less than a year of claimed U.S. physical presence for the mother during the same time: 11/19/2013 to 11/21/2013; 04/24/2014 to 05/29/2014; 06/03/2014 to 08/01/2014; 08/04/2014 to 12/05/2014; and 01/25/2015 to 05/07/2015. The lease agreements are evidence that the mother rented property in New York but do not show that she resided in each apartment and for how long. Therefore, the information in the leasing company letter and the related lease agreements shows that the mother rented property in the United States at some point between September 2013 and March

[3] The University [redacted] website currently reflects that all of its coursework, including "campus" classes in Arizona, are online. *See* https://www.[redacted]edu/about/campus-locations.html. Therefore, the Applicant's evidence does not contain sufficient information to establish that the mother was physically present in the United States when she was taking classes or performing coursework at University [redacted]

2015, but is not sufficient to establish that she had U.S. physical presence through specific periods of residence in the United States.

Finally, although the Applicant submits two employment letters on appeal, the employers collectively claim that the Applicant's mother worked for them in Connecticut from November 2002 to May 2003, and September 2003 to February 2004, a collective period of time that is approximately 12 months. Without additional evidence of the mother's physical presence in the United States, this evidence is not sufficient to establish that the Applicant's mother had at least five years of U.S. physical presence in the United States, no less than two of which were after the age of 14 years.

In summary, the evidence regarding the Applicant's mother's U.S. physical presence consists primarily of personal statements with assertions that her mother was present in the United States during certain periods of time that total over nine years. However, the Applicant also confirms that she does not have supporting evidence with respect to the five years that she claims her mother was physically present while attending school in the United States. Other evidence, including the mother's U.S. tax records, U.S. lease agreements, U.S. leasing company letter, and University [redacted] documents do not contain sufficient information to establish that her mother was physically present in the United States for any specific periods of time. As a consequence, the Applicant has not established that her U.S. citizen parent has at least five years of U.S. physical presence, no less than two of which were after the age of 14 years, as required to meet section 322(a)(2)(A) of the Act conditions. As such, the Applicant has not established she is eligible for a Certificate of Citizenship under section 322 of the Act.

ORDER: The appeal is dismissed.