U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30927538

Date: DEC. 14, 2023

Appeal of San Antonio, Texas 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 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 Antonio, Texas Field Office denied the application, concluding that the Applicant appears to have acquired citizenship through his U.S. citizen mother under section 320 of the Act and therefore, is ineligible for a Certificate of Citizenship under section 322 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, who is currently 17 years of age, was born in Japan in [redacted] 2006, and was adopted in Japan by married parents in [redacted] 2012. A U.S. passport shows that the Applicant's mother is a U.S. citizen by birth. The Applicant's Japanese passport and immigrant visa collectively reflect that he was granted admission to the United States as a lawful permanent resident in September 2019. The Applicant indicated on the Form N-600K that he currently resides in Indonesia with his parents. He claims U.S. citizenship under section 322 of the Act solely through his 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.
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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.

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.

III. ANALYSIS

The issue on appeal is whether the Applicant is precluded from applying for a Certificate of Citizenship under section 322 of the Act based on having previously acquired U.S. citizenship under section 320 of the Act.

The statute at section 322(a) of the Act precludes an individual from applying for a Certificate of Citizenship under that provision if they have acquired citizenship automatically under section 320 of the Act. The Director concluded that the Applicant met all of the requirements to automatically acquire U.S. citizenship under section 320 of the Act in September 2019, the date he was admitted to the United States as a lawful permanent resident, and therefore is ineligible for approval of the Form N-600K. In the denial, the Director suggested that the Applicant should submit instead a Form N-600, Application for Certificate of Citizenship, under section 320 of the Act.

On appeal, the Applicant contends that contrary to the Director's determination, he has not acquired citizenship under section 320 and therefore remains eligible under section 322 of the Act because although he was admitted to the United States as a lawful permanent resident in September 2019, he has never resided in the United States with his U.S. citizen mother for purposes of satisfying section 320(a)(3) of the Act residence requirements. In a statement from his mother, she confirms on appeal that she has not resided permanently in the United States since prior to the Applicant's birth and that any trips to the United States were temporary in nature. She includes copies of her passport with travel stamps documenting her brief trips to the United States, the Applicant's school records reflecting that he has been attending school in Indonesia since 2017, and a September 2023 letter from their church in Indonesia confirming that the Applicant and his family have been church members since 2017.

Under the Act, "[t]he term 'residence' means the place of general abode; the place of general abode of a person means the principal, actual dwelling place in fact, without regard to intent." Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33). Based on the Applicant's explanation on appeal and his supporting evidence, the record reflects that his principal, actual dwelling place has been in Indonesia since at least 2017 and does not reflect that he resided in the United States in the legal and physical custody of a U.S. citizen parent pursuant to his admission as a lawful permanent resident at some point on or after September 2019. Therefore, the record does not reflect that the Applicant would be eligible for a Certificate of Citizenship under section 320(a)(3) of the Act, and he has overcome the Director's conclusion that the Form N-600K is unapprovable under section 322(a) of the Act. Accordingly, we are returning the matter to the Director to determine whether or not the Applicant has satisfied all of the conditions at section 322 of the Act to obtain a Certificate of Citizenship.

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