U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29650856

Date: DEC. 19, 2023

Appeal of Chicago, Illinois Field Office Decision

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

The Applicant's U.S. citizen father filed the instant Form N-600K seeking a Certificate of Citizenship on the Applicant's behalf under section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The Director of the Chicago, Illinois Field Office denied the Form N-600K, concluding that the Applicant did not qualify for a Certificate of Citizenship under section 322 of the Act because she was not residing outside of the United States, as required. The Director also found evidence insufficient to establish that the Applicant's father had a U.S. citizen parent who satisfied the five-year physical presence in the United States mandated by section 322 of the Act.[1]

On appeal, the Applicant's father asserts that the decision was in error because he previously provided evidence to show that the Applicant attended school in Mexico, as well as documents that he and the Applicant's mother, although currently living in the United States, maintained residence in Mexico to which they intended to return. He further states that the Director failed to acknowledge evidence of his biological relationship with the Applicant's U.S. citizen maternal grandmother. The father indicated on the Form I-290B, Notice of Appeal or Motion, that he would submit a brief and/or additional evidence to our office within 30 calendar days of filing the appeal; however, to date we have not received any supplemental documentation or correspondence and consider the record complete.

The Applicant's father bears the burden of proof to demonstrate eligibility for the benefit sought 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.

Section 322 of the Act applies to children of U.S. citizens born and residing outside of the United States.

[1] The father indicated that although he did not have the U.S. physical presence required under section 322 of the Act, his U.S. citizen mother satisfied this condition. However, he did not provide a copy of his birth certificate to establish the claimed relationship.

It provides, 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 [of the Act], [8 U.S.C. § 1432][2]. . . . [and] the [Secretary of Homeland Security] shall issue a certificate of citizenship to such applicant upon proof . . . that the following conditions have been fulfilled:
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> (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 . . . 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.
>
> (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. . . .

Emphasis added.

The record reflects that the Applicant was born in Mexico in 2008 to married parents – a U.S. citizen father and a noncitizen mother. The Applicant's father filed the instant Form N-600K in September 2021 indicating that he, the Applicant, and her mother were residing together in Texas. The Director issued a notice of intent to deny, advising the father that to be eligible for a Certificate of Citizenship under section 322 of the Act the Applicant had to reside outside of the United States in his legal and physical custody. In response, the Applicant's father submitted additional evidence, including two documents he annotated as a 2020 real estate tax bill and a 2021 paystub from Mexico;[3] a letter from a school in Mexico confirming the Applicant's enrollment and attendance at that school from 2005 until 2021; and proof of her admission to the United States as a nonimmigrant visitor in April 2021.

[2] Section 320 of the Act provides, in pertinent part, that a child born outside of the United States automatically becomes a citizen of the United States if: (1) at least one parent of the child is a citizen of the United States, whether by birth or naturalization; (2) the child is under the age of eighteen years; and (3) the child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

[3] We note that neither document is accompanied by the requisite certified English translation, and we are unable to assess their probative value. 8 C.F.R. § 103.2(b)(3).

As stated, the Director determined that this evidence was not sufficient to establish that the Applicant is currently residing outside of the United States in her father's legal and physical custody as required in section 322(a)(4) of the Act. The Applicant's father has not overcome this determination on appeal.

The term "residence" means "the place of general abode," a person's "principal, actual dwelling place in fact, without regard to intent." Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33). Here, the father represented on the Form N-600K that the family is currently residing in the United States, and he does not offer evidence to the contrary on appeal. We acknowledge the father's statements that he owns a home in Mexico and was employed there before filing the Form N-600K, as well as evidence that the Applicant attended school in Mexico before she was admitted to the United States in April 2021. However, the maintenance of financial interests, retention of a house, or intention to return to a country where a person does not live does not establish that the person's "dwelling place in fact" is in that country for purposes of section 101(a)(33) of the Act. *Matter of Jalil*, 19 I&N Dec. 679, 681 (BIA 1988).

Consequently, the Applicant's father has not demonstrated that he and the Applicant are currently residing outside of the United States. Because the Applicant is ineligible for issuance of a Certificate of Citizenship on that basis alone, we need not address at this time whether the evidence is sufficient to establish that she has a U.S. citizen grandparent who satisfied the five-year U.S. physical presence requirement, and whether she meets the remaining conditions in section 322 of the Act. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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).

ORDER: The appeal is dismissed.[4]

[4] The record reflects that while the appeal was pending U.S. Citizenship and Immigration Services granted the Applicant's request for adjustment of status to that of a lawful permanent resident child of a U.S. citizen (IR-7). Although the Applicant is not eligible for a Certificate of Citizenship under section 322 of the Act, our decision does not preclude her from making a U.S. citizenship claim pursuant to section 320 of the Act or any other citizenship provisions which may apply through filing a Form N-600, Application for Certificate of Citizenship. *See* Form N-600, Instructions for Application for Certificate of Citizenship, at 1, https://www.uscis.gov/n-600 (providing, in part, that the form may be filed by a child (or a parent or guardian on behalf of a minor child) who is requesting a Certificate of Citizenship because they were born abroad to a U.S. citizen parent, or automatically became a U.S. citizen after birth, but before turning 18 years of age).