U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24369163

Date: FEB. 7, 2023

Appeal of Los Angeles, California Field Office Decision

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

The Applicant's U.S. citizen father seeks 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 Los Angeles, California Field Office denied the application, concluding that the record did not establish as required that the Applicant is residing outside of the United States with her U.S. citizen parent. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Applicant's father bears the burden of proof in these proceedings 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 abroad in 2008 to married parents—a U.S. citizen father[1] and a noncitizen mother. In 2022, the Applicant's father filed the instant Form N-600K indicating that he resided in California while the Applicant and her mother resided in Iran. Section 322 of the Act 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] The [Secretary of Homeland Security] shall issue a certificate of citizenship to such applicant upon proof, to the satisfaction of the [Secretary], 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.

[1] The Applicant's father naturalized as a U.S. citizen in 2001.

[2] That section provides for derivative citizenship of foreign-born children who are under 18 years of age and residing in the United States as lawful permanent residents in the legal and physical custody of their U.S. citizen parent or parents.

(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. . . .

(Emphasis added).

Absent evidence to the contrary, U.S. Citizenship and Immigration Services (USCIS) will presume that a U.S. citizen parent has legal custody of a child, and will recognize that U.S. citizen as having lawful authority over the child, in the case of a biological child who currently resides with both natural parents (who are married to each other, living in marital union, and not separated). 8 C.F.R. § 322.1(1)(i).

Because the Applicant was born abroad, she is presumed to be a noncitizen and her father bears the burden of establishing eligibility for a Certificate of Citizenship on the Applicant's behalf by a preponderance of credible evidence. *See Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008).

II. ANALYSIS

There is no dispute that the Applicant meets some of the above conditions, as she is under the age of 18 years and has a U.S. citizen parent. The issue on appeal is whether the Applicant's father has established that the Applicant is currently residing outside of the United States in his legal and physical custody, as required in section 322(a)(4) of the Act.

The Director determined that the Applicant did not meet this requirement, because the information on the Form N-600K as well as the supporting evidence, which included the father's U.S. tax and employment documents indicated that the father is currently residing in California and the Applicant is residing in Iran with her mother.

On appeal, the father resubmits his U.S. 2019-2021 tax and employment documents, and an updated letter confirming his employment in California since 2019. He asserts that the previously provided evidence establishes his prior physical presence in the United States and the Applicant is therefore

eligible for a Certificate of Citizenship under section 322 of the Act.[3] We acknowledge the father's statements, but conclude that they are not sufficient to establish that the Applicant is currently residing outside of the United States in his legal and physical custody.

Although not defined in the statute and regulations, the term "physical custody" has been interpreted in the context of derivative citizenship proceedings to mean actual residence with the parent. *See Matter of M-*, 3 I&N Dec. 850, 856 (BIA 1950). The term "residence," in turn 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 Applicant's father represented on the Form N-600K that he is residing in California. The California address listed in his employment and tax documents is consistent with this representation and supports a conclusion that at this time California is his "principal, actual dwelling place in fact." Furthermore, the father indicated that both the Applicant and her mother live in Iran. Consequently, as the Applicant's father has not demonstrated that the Applicant is actually residing with him outside of the United States the *physical custody* requirement in section 322(a)(4) of the Act has not been met.

For the same reason, the Applicant's father does not meet the *legal custody* presumption in the regulation at 8 C.F.R. § 322.1(1)(i), which provides that the U.S. citizen's lawful authority over the child will be presumed in the case of a biological child who currently *resides with both natural parents* who are married to each other and living in marital union. Here, although the Applicant's parents are married to each other, the record does not establish that they are currently living together in marital union and that the Applicant is residing with *both* her parents; rather, the Applicant's father is residing in the United States, and the Applicant and her mother are residing in Iran. Furthermore, section 322(a)(4) of the Act specifically requires the child to be residing in their U.S. citizen parent's legal custody *outside of the United States*. Because the Applicant's father currently resides *in the United States*, he does not satisfy this condition regardless of whether he maintains lawful authority over the Applicant.

Based on the above, we conclude that the Applicant's father has not met his burden of proof to show that the Applicant satisfies the legal and physical custody conditions in section 322(a)(4) of the Act. Because the Applicant is ineligible for issuance of a Certificate of Citizenship on that basis alone, we need not address at this time whether she meets the remaining requirements in section 322 of the Act, including her father's five-year physical presence in the United States, and her own temporary presence in the United States pursuant to a lawful admission and maintenance of lawful status.[4]

III. CONCLUSION

The Applicant is ineligible for issuance of a Certificate of Citizenship under section 322 of the Act, because the preponderance of the evidence in the record does not establish she is residing outside of the United States in her U.S. citizen father's legal and physical custody. Although we dismiss the appeal for this reason, the dismissal does not preclude the Applicant from making a U.S. citizenship

[3] We note that the Director's decision does not include any findings concerning the father's U.S. physical presence required under section 322(a)(2)(A) of the Act.

[4] Instead, we reserve those issues. Our reservation of the issues is not a stipulation that those requirements have been met and should not be interpreted as such. Rather, addressing them at this time would serve no constructive purpose, as it would not change the outcome.

claim before USCIS or the U.S. Department of State based on any other citizenship provisions of the Act that may be applicable in her case.[5]

ORDER: The appeal is dismissed.

[5] In particular, because the Applicant was born in wedlock to a U.S. citizen parent, she may be eligible to claim acquisition of U.S. citizenship at birth pursuant section 301(g) of the Act, 8 U.S.C. § 1401(g). That section provides, in relevant part that a person born abroad to one U.S. citizen and one noncitizen parent is a national and citizen of the United States at birth, if prior to the birth of such person the U.S. citizen parent was physically present in the United States or its outlying possessions for a period or periods totaling not less than 5 years, at least 2 of which were after the parent's 14th birthday. If the Applicant believes she satisfies these requirements, she may file Form N-600, Application for Certificate of Citizenship, with USCIS. In the alternative, she may make a claim of U.S. citizenship before the U.S. Department of State. In either case the Applicant must submit appropriate documentation to support her U.S. citizenship claim, as provided in the Form N-600 or U.S. Department of State instructions, as applicable.