U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23479152

Date: JAN. 6, 2023

Appeal of Houston, Texas Field Office Decision

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

The Applicant's adoptive 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 Houston, Texas Field Office denied the application, concluding that the record did not establish as required that the Applicant and her adoptive father resided together outside the United States and that the father satisfied the overall five-year U.S. physical presence condition. 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 indicates that the Applicant was born in Nigeria in [redacted] 2017. In May 2021, the Applicant's father filed the instant Form N-600K indicating that he adopted the Applicant in Nigeria in May 2020, and that the Applicant is currently residing there. 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].[1] 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:
>
> > (1) At least one parent . . . is a citizen of the United States, whether by birth or naturalization.

[1] 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. . . .

(b) Upon approval of the application (which may be filed from abroad) and . . . upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this Act of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the [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)].

(Emphasis added).

Because the father claims the Applicant is his adopted child, he must establish that the Applicant 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*." (Emphasis added). Section 101(b)(1)(E)(i) of the Act; 8 C.F.R. 322.1.

Because the Applicant was born abroad, she is presumed to be a noncitizen and her adoptive 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

The issues on appeal are 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, and whether he has also shown that he meets the U.S. physical presence requirement in section 322(a)(2)(A) of the Act.

The Director determined that the Applicant's father did not show he satisfied the legal and physical custody conditions, because the evidence, including the father's and his spouse's employment letters and the Applicant's school records indicated that the father is residing in Texas, while the Applicant is residing in Nigeria. The Director further found that the evidence, which consisted of the father's 1999 Certificate of Naturalization and a 2021 letter confirming his employment in Texas, was insufficient to demonstrate that the father met the five-year U.S. physical presence requirement.

On appeal, the Applicant's father confirms that he resides and is employed in Texas. He asserts, however, that he also maintains a residence in Nigeria and often travels there to spend time with his children. In support, he submits documentation including family photographs and two utility bills listing his address in Nigeria. The father does not submit any additional evidence concerning his prior physical presence in the United States, stating only that he "more than meets this requirement and there is proof of this in the record." We have reviewed the entire record, as supplemented on appeal and for the following reasons conclude that it remains insufficient to demonstrate that the Applicant meets the requirement of residing abroad in his father's legal and physical custody. Because the Applicant is ineligible for a Certificate of Citizenship on that basis alone, we do not reach the issue of his father's requisite physical presence in the United States.

A. Legal Custody

Legal custody refers to responsibility for and authority over a child. 8 C.F.R. § 322.1. In the case of an adopted child, a determination that a U.S. citizen parent has legal custody is based on the existence of a final adoption decree. 8 C.F.R. § 322.1(2).

As an initial matter, although not addressed in the Director's decision the record does not sufficiently establish the requisite parent-child relationship between the Applicant and her purported adoptive father, V-A-E-.[2] Specifically, while the adoption decree issued in the Family Court of [redacted] of Nigeria in May 2020 states that [redacted] was one of the two applicants for adoption, the record contains no evidence that V-A-E- and [redacted] are the same person. Moreover, the decree does not include information about both of the Applicant's birth parents, or the circumstances under which she was given up for adoption; it states only that the court ordered that "the [child] be placed for Adoption by [redacted] and [the second applicant] for the purposes of safeguard, welfare and overall interest of the child and all incidents thereto as stated under the law." The decree further provides that "henceforth the child shall be known and called T-U-E- and that "all documents relating to her shall so reflect." As the adoption decree does not include the name of the Applicant's father, and the father does not submit evidence to show that he and [redacted] are the same person, we are unable to conclude that he is in fact the Applicant's adoptive father, as he claims. Furthermore, the information in the Applicant's Nigerian birth certificate, which was registered before the court issued the adoption decree raises questions about the adoption's validity. In particular, the birth certificate reflects that the Applicant was born in Nigeria in [redacted] 2012 to V-A-E- (who claims to be her adoptive father) and A-M- (who appears to be the Applicant's birth mother identified in the adoption decree), and her birth was registered there in October 2017. But, the adoption decree

[2] We use initials for privacy when possible. To avoid confusion, we will also refer to V-A-E- as the Applicant's father or adoptive father in this decision despite the insufficient evidence of the parent-child relationship between them.

authorizing the Applicant to use her adoptive father's last name was not issued until May 2020, over two years after the Applicant's birth was registered identifying her adoptive father and with his last name. The Applicant's father does not explain why he was listed on the Applicant's birth certificate as her parent before the adoption was final, or why his name was not included in the adoption decree as one of the adoptive parents. Given these unresolved inconsistencies, we conclude that the record is currently insufficient to establish the requisite parent-child relationship between the Applicant and her V-A-E-, the U.S. citizen who filed the instant Form N-600K on the Applicant's behalf.

Because the legal custody determination is based on the existence of the final adoption decree, which in this case does not indicate that the father legally adopted the Applicant, we must conclude that the parent's legal custody requirement in section 322(a)(4) of the Act has not been met.

B. Physical Custody

Even if the Applicant's father had established that he in fact legally adopted the Applicant in Nigeria (which he has not for the reasons discussed above), the father has not shown that the Applicant is residing outside of the United States in his physical custody.

Although undefined 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" means "the place of general abode," which in turn means a person's "principal, actual dwelling place in fact, without regard to intent." Section 101(a)(33) of the Act. Here, the Applicant's father represented on the Form N-600K that he is residing in Texas and provided evidence that he has been employed there since at least 2017. The father also represented that the Applicant is residing in Nigeria, and submitted the Applicant's Nigerian school record in support of this representation. We acknowledge the father's claim on appeal that he maintains residences both in the United States and Nigeria, as well as the submission of two utility bills addressed to him at his Nigerian address and family photographs; however, they are insufficient to establish that his "principal, actual dwelling place" is in Nigeria in view of the previously provided evidence pointing to his continued residence and employment in Texas.

We conclude therefore that the Applicant's father has not demonstrated that the Applicant is residing in his physical custody outside of the United States, as required under section 322(a)(4) of the Act.

III. CONCLUSION

The Applicant's father has not met his burden of proof to establish that the Applicant qualifies as his adopted child, and that she also satisfies the requirement of residing outside of the United States in his legal and physical custody. 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 Applicant meets the remaining conditions in section 322 of the Act, including the father's five-year physical presence in the United States, and the Applicant's own temporary presence in the United States pursuant to a lawful admission and maintenance of lawful status.[3]

[3] Instead, we reserve those issues. Our reservation of the issues is not a stipulation that those requirements have been met

ORDER: The appeal is dismissed.

and should not be interpreted as such. Rather, addressing the father's physical presence and the Applicant's temporary presence and maintenance of status in the United States would serve no constructive purpose at this time, as it would not change the outcome.