U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29665867

Date: NOV. 2, 2023

Appeal of Miami, Florida Field Office Decision

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

The Applicant's adoptive naturalized U.S. citizen mother 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 Miami, Florida Field Office denied the Form N-600K, concluding that the Applicant was not eligible for a Certificate of Citizenship because the record did not establish, as required, that he was residing outside of the United States with his adoptive mother.

On appeal, the Applicant's adoptive mother asserts that she has satisfied all relevant conditions in section 322 of the Act and the denial therefore was in error.

The Applicant's mother 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.

I. LAW

The record reflects that the Applicant was born in Honduras in [redacted] 2005, and legally adopted there by his U.S. citizen mother in [redacted] 2017. The mother filed the instant Form N-600K indicating that she was residing in Florida, while the the Applicant was residing in Honduras.

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] Section 320 of the Act 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.

(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.

. . . .

(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).

Section 101(b)(1) of the Act, 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.

Legal custody refers to the 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 will be based on the existence of a final adoption decree. 8 C.F.R. 322.1(2).

II. ANALYSIS

There is no dispute that the Applicant was legally adopted by his U.S. citizen mother while under the age of 16 years, and that he is currently under the age of 18 years. The issue on appeal is whether the Applicant's mother has shown that the Applicant is residing outside the United States in her legal and physical custody, as required in section 322(a)(4) of the Act. We have reviewed the entire record, and for the reasons explained below conclude that she has not.

The Applicant's mother indicated on the instant Form N-600K that she was residing in Florida, while the Applicant was residing in Honduras. In support, she submitted evidence including a copy of her

Florida driver's license issued in 2018; U.S. employment, social security, and tax records dated in 2021and listing her address in Florida; and the Applicant's 2018-2021 school records, which reflected that he was living in Honduras and attending school there.

Because this evidence indicated that the Applicant's mother was not living with the Applicant in Honduras, the Director determined that the Applicant did not meet the condition of residing abroad in his mother's legal and physical custody, and did not qualify for a Certificate of Citizenship under section 322 of the Act.

In her brief on appeal, the Applicant's mother references previously provided evidence and reasserts eligibility. She explains that the Applicant has been in her physical custody since approximately 2005, and in her legal custody since the adoption became final in 2017. She further states that she has also shown that she is a U.S. citizen who meets the five-year physical presence condition and, lastly, that the Applicant is currently residing abroad, as required. The mother avers that the Applicant therefore satisfies the conditions in section 322 of the Act and is eligible for a Certificate of Citizenship. We disagree.

As an initial matter, we acknowledge the mother's statement that her physical custody of the Applicant began sometime after his birth in 2005, and her legal custody over him commenced in 2017, when she formally adopted him in Honduras. Although this statement indicates that the Applicant satisfies the two-year physical and legal custody requirement in section 101(b)(1)(E)(i) to qualify as his mother's adopted "child" for citizenship purposes, it does not establish that he meets the foreign residence and custody conditions in section 322(a)(4) of the Act.

As stated, section 322(a)(4) of the Act requires the Applicant's mother to show that the Applicant is *residing outside of the United States* in her 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 mother's Florida driver's license, employment records, and tax documents indicate that her "principal, actual dwelling place in fact" is currently in Florida, while her statements on appeal, as well as the Applicant's Honduran school attendance records, indicate that the Applicant is currently residing in Honduras. Consequently, as the mother has not demonstrated that the Applicant is actually residing with her outside of the United States at this time, the physical custody requirement in section 322(a)(4) of the Act has not been met.

Similarly, although we recognize that the mother was granted legal custody over the Applicant when she adopted him in 2017, she has not shown that the Applicant is currently residing with her and in her legal custody outside of the United States.[2]

[2] The mother does not explain with whom the Applicant resides in Honduras, or who is responsible for his care and exercises control over him while she is in the United States. Nor does she claim that after filing the instant Form N-600K she moved to Honduras and is now living there with the Applicant.

Based on the above, we conclude that the Applicant's mother has not met her burden of proof to show that the Applicant is currently residing outside of the United States in her legal and physical custody, as required 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 he meets the remaining requirements in section 322 of the Act, including his mother's five-year physical presence in the United States, and his own temporary presence in the United States pursuant to a lawful admission and maintenance of lawful status. *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.