U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29667735

Date: JAN. 04, 2024

Appeal of Miami, Florida Field Office Decision

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

The Applicant seeks a Certificate of Citizenship 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 application, concluding that the record did not establish that the Applicant satisfied the conditions for deriving U.S. citizenship at 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 dismiss the appeal.

I. LAW

The record contains the Applicant's birth certificate and an adoption order from the [redacted] in Brazil which collectively show that he was born in Brazil in [redacted] 2005, adopted in Brazil in 2010 by a father named J-P-N- and a mother named S-R-N-, and that he is a citizen of Brazil. The record contains a U.S. passport and U.S. birth certificate showing that the Applicant's father, J-P-N-, is a citizen of United States by birth, but the record does not show that the Applicant's mother is a U.S. citizen; therefore, the Applicant claims U.S. citizenship under section 322 of the Act solely through his father.

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), provides for children under 18 years of age who were born outside of the United States to derive U.S. citizenship if they fulfill certain conditions, such as: having at least one U.S. citizen parent; the U.S. citizen parent was, or has a U.S. citizen grandparent who was, physically present in the United States or its outlying possessions for a period(s) totaling not less than five years, at least two of which were after attaining the age of fourteen years; the child is residing outside of the United States in the legal and physical custody of the U.S. citizen parent; and the child is temporarily present in the United States pursuant to a lawful admission and is maintaining such lawful status.

The regulation at 8 C.F.R. § 322.1 provides 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." 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-Larios*, 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 376.

II. ANALYSIS

As an initial matter, as of [redacted] 2023, the Applicant is no longer under the age of 18 years as section 322(a)(3) of the Act requires. Unfortunately, the Applicant is therefore ineligible for a Certificate of Citizenship under this statutory provision regardless of whether he may have fulfilled all the other requirements at section 322 of the Act before he was 18 years old.

Even if the Applicant was under the age of 18 years, he has not otherwise overcome the Director's finding that he had not shown that he satisfies the U.S. physical presence conditions at section 322(a)(2)(A) of the Act through his U.S. citizen father, J-P-N-.[1]

As an attachment to the Form N-600K, filed in May 2021, the Applicant stated that J-P-N- had numerous periods of physical presence in the United States, beginning with an initial, continuous period from the date of J-P-N-'s birth in New Jersey in 1965 to J-P-N-'s claimed departure from the United States in 1970, after which the Applicant asserted that his father's U.S. physical presence consisted of a period of time from 1991 to 1994, during which the father is claimed to have resided with his brother, who was attending college in the United States. The Applicant's evidence regarding his father's claimed U.S. physical presence consists primarily of statements from the Applicant and his father's brother, vaccination records showing that his father received shots on certain dates in February and March 1970, a blank, undated check and a check reorder form from a Pennsylvania bank listing the father and the father's brother on the shared bank account, evidence that his father applied for a U.S. social security number in 1991 and a Maryland driver's license in 1994, and photographs that his father claims show the father was physically present in the United States from 1991 to 1994.

[1] On appeal, the Applicant claims that he also satisfies the physical presence requirement through his U.S. citizen grandfather pursuant to section 322(a)(2)(B) of the Act and includes additional evidence regarding this claim. We note that the Applicant did not raise this claim and submit related evidence to the Director. Regardless, since the identified basis for denial, i.e., the Applicant's statutory ineligibility under section 322(a)(3) of the Act, is dispositive of the Applicant's appeal, we decline to reach and hereby reserve the Applicant's appellate arguments regarding his U.S. citizen grandfather's U.S. physical presence. *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).

The Director denied the Form N-600K, concluding that the Applicant had not shown that he satisfied the physical presence conditions for deriving U.S. citizenship at section 322 of the Act because his evidence shows that his father had been physically present in the United States on certain dates but did not show that the father was physically present for the required period of five years, no less than two of which were after the age of 14 years.

Upon de novo review, we adopt and affirm the Director's decision to deny the Applicant's Form N-600K with the comments below. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight U.S. Courts of Appeals in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

On appeal, the Applicant father states, on behalf of the Applicant, that the evidence before the Director was sufficient to show that the father satisfied the U.S. physical presence requirements at section 322(a)(2)(A) of the Act. The father contends that his vaccination records submitted below list the name and address of a doctor in California and therefore are evidence that he was in the United States on certain days in 1970. The father also confirms that his initial U.S. passport is not stamped to show that he entered or exited the United States. However, he contends that because the initial passport was issued in 1970, it should be considered evidence that he had not left the United States since his birth and therefore had been continuously present in the United States from his birth in 1965 until 1970. The father further asserts that bank records are no longer retained but that he would not have opened a U.S. bank account if he had not intended to reside in the United States for a lengthy period of time and therefore, he claims, the limited evidence showing that he shared a bank account with his brother supports his claim to have continuously resided in the United Staes from 1991 to 1994. Finally, the father adds additional details regarding the previously submitted photographs. However, the photographs themselves show, at best, that the father was present in the United States on the days that the photographs were taken, and while we acknowledge the father's explanation for the lack of bank records from his claimed period of physical residence from 1991 to 1994, the undated blank check and the check reorder form in the record do not establish his physical presence in the United States at any given time. Consequently, it remains that even if the record demonstrated that the father was in the United States for the five years from his birth in 1965 until 1970, when he claimed to have departed the United States, it does not contain primary or other probative evidence supporting the father's assertion that he was also physically present in the United States for a continuous period beginning in 1991 to 1994 such that he established he was physically present in the United States for the requisite two years after the age of 14.

The burden of proof remains on the Applicant to establish eligibility, and here he has not satisfied that burden as the medical records, unstamped 1970 passport, joint U.S. bank account information, and photographs reflect that the father was in the United States on certain days rather than for the requisite period of five years, including at least two years after turning 14 years of age, and where the affidavits provided are not sufficiently detailed and probative regarding his U.S. citizen father's physical presence in the United States. As a consequence, the Applicant has not established that his U.S. citizen parent has at least five years of U.S. physical presence, no less than two of which were after the age of 14 years, as required to meet section 322(a)(2)(A) of the Act conditions.

III. CONCLUSION

The Applicant is not eligible for issuance of a Certificate of Citizenship under section 322(a)(3) of the Act because he is over 18 years old. Moreover, even if he were not over 18 years of age, he also has not shown that he satisfies the U.S. physical presence conditions for his U.S. citizen father at section 322(a)(2)(A) of the Act. As such, the Applicant has not established he is eligible for a Certificate of Citizenship under section 322 of the Act.

ORDER: The appeal is dismissed.