



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **SEP 25 2013** OFFICE: LAWRENCE, MA

IN RE:

APPLICATION: Application for Certificate of Citizenship under section 322 of the Immigration and Nationality Act; 8 U.S.C. § 1433

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Form N-600K, Application for Citizenship and Issuance of Certificate Under Section 322 (Form N-600K) was denied by the Field Office Director, Lawrence, Massachusetts (director), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born in Liberia on October 7, 1998, and she was adopted in Liberia on March 21, 2003, when she was four years old. The applicant's adoptive mother was born in Liberia and became a naturalized U.S. citizen on December 8, 2006. The applicant presently seeks a Certificate of Citizenship pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

In a decision dated August 23, 2012, the director determined that the applicant failed to establish that she resided in the physical custody of her adoptive mother for at least two years, as required under section 101(b)(1)(E)(i) of the Act, 8 U.S.C. § 1101(b)(1)(E)(i), or that she resides abroad in the physical custody of the U.S. citizen parent, as required under section 322 of the Act. The application was denied accordingly.¹

On appeal, the applicant asserts, through counsel, that the evidence in the record establishes that the applicant's adoptive mother has resided primarily with the applicant in Liberia since November 2003, and that the applicant therefore satisfies the residence requirements for citizenship under section 322 of the Act.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d. Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

Counsel requests on appeal that oral argument be allowed in the applicant's case. The request will be denied. Under the regulation at 8 C.F.R. § 103.3(b), the Service has sole authority to grant or deny a request for oral argument and will grant such argument only in cases that involve unique factors or issues of law that cannot be adequately addressed in writing. The record in this case is voluminous and adequately addresses the pertinent facts and legal issues.

Section 322(a) of the Act, 8 U.S.C. § 1433(a), applies to children born and residing outside of the United States, and provides, in pertinent part, that:

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. The [Secretary] 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.

(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; or

¹ A previously filed Form N-600K was denied by the director as abandoned on March 16, 2010.

(B) 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.

Section 322(c) of the Act, 8 U.S.C. § 1433(c) provides that section 322(a) of the Act “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).”

Section 101(b)(1)(E)(i) of the Act, 8 U.S.C. § 1101(b)(1)(E)(i), defines the term “child” in pertinent part for immigrant visa purposes, as an unmarried person under 21 years of age who is:

[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

Under the Act, “[t]he term ‘residence’ means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent.” Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33). The two-year residence requirement may be satisfied either before or after the adoption. *Matter of M*, 8 I&N Dec. 118 (BIA 1958; A.G. 1959). For section 101(b)(1)(E)(i) of the Act purposes, “the residence requirement implies that the child resides in a home established by the adopting parent.” *Matter of Repuyan*, 19 I&N Dec. 119, 120-21 (BIA 1984).

[M]ere periodic visits by an adopting parent in the home of the child do not satisfy the residence requirement of section 101(b)(1)(E) of the Act. Under such circumstances, the child has not ‘resided with’ the adopting parent but rather the parent has visited the child. Moreover, we would not find that such visits equate to residence. The requirement of residence with the parents connotes a familial relationship not inherent in a mere visit. We have never required that residence be continuous; however, we do conclude that residence of a child with an adoptive parent entails more than a succession of visits by the adopting parent in the home of the child.

Id. at 121.

Because the applicant was born abroad, she is presumed to be an alien and bears the burden of establishing her claim to U.S. citizenship by a preponderance of credible evidence. *See Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008). *See also*, 8 C.F.R. § 341.2(c) (the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence.) The “preponderance of the

evidence” standard requires that the record demonstrate that the applicant’s claim is “probably true,” based on the specific facts of each case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989)). Even where some doubt remains, an applicant will meet this standard if she or he submits relevant, probative and credible evidence that the claim is “more likely than not” or “probably” true. *Id.* (citing *INS v. Cardoza-Fonseca*, 480 U.S. 421, 431 (1987)).

To establish that the applicant resides with her adoptive mother in Liberia, and has done so for at least two years, counsel submits an apartment agreement reflecting that the adoptive mother subleased an apartment from [REDACTED] for a five year period between March 20, 2003 and March 19, 2008. Transfer Deed and Warranty Deed evidence reflects that the adoptive mother and another individual, [REDACTED] purchased property in Brewersville, Montserrado, Liberia in August 2005.

Evidence that the adoptive mother registered a business, [REDACTED] as a sole proprietorship and partnership in Montserrado, County Liberia on October 15, 2009, is also in the record. In addition, the record contains Certificate of Business Registration evidence, reflecting that between November 6, 2004 and December 31, 2005, the applicant’s adoptive mother was the registered owner of a [REDACTED] in Montserrado County, Liberia.

Medical receipts reflect that the applicant received medical treatment in Monrovia, Liberia on the following dates: March 2004 and April 2004; November 2006; February 2007 and November 2007; April 2008; December 2009; and March 2010. The evidence reflects that the applicant’s medical costs were charged to her adoptive mother.

School records reflect that the applicant attended school in Monrovia, Liberia between 2004 and 2007, and attended school in Brewersville, Liberia between 2008 and 2010.

The adoptive mother’s cousin, [REDACTED], states in a May 13, 2007 letter that the applicant was in her adoptive mother’s care and custody in March 2003, and after her mother’s return from the United States in November 2003. She states that the applicant stayed at her adoptive mother’s apartment in the care of a cousin while her adoptive mother was in the United States, and that the applicant’s adoptive mother has cared for the applicant in Liberia since returning to the country in November 2003. [REDACTED] also states, in a letter dated May 16, 2007, that the applicant has been in her adoptive mother’s custody and care since her mother’s return to Liberia in November 2003.

The applicant’s adoptive mother states, in pertinent part, in affidavits dated October 21, 2011 and August 22, 2012, that she resides permanently in Liberia with the applicant and her family, and that the applicant has been in her physical custody in Liberia since March 2003. She states that she leased an apartment in Liberia in March 2003, and that when she returned to the United States between March and November 2003, the applicant stayed in the apartment with friends and relatives. She indicates further that her “physical presence” and “temporary domicile” has been in Liberia since about November 27, 2003; however, she travels “back and forth” between her home in Liberia and the United States, and she shares a home with family members at [REDACTED] when she visits the United States. She states, with regard to her employment, that she has worked with [REDACTED] “in a contractual role since August of 2003;” that her family and friends have ownership interests in [REDACTED];

and that since departing to Liberia in November 2003, she works at [REDACTED] temporarily when visiting the United States.

The record contains a lease signed by the applicant's adoptive mother on November 1, 2003, reflecting her agreement to rent an apartment from [REDACTED] for a period of 96 months between November 1, 2003 and November 1, 2011. The applicant's adoptive mother also states on the Form I-130, Petition for Alien Relative (Form I-130), filed on behalf of the applicant and signed by the adoptive mother on December 16, 2006, that her address is: [REDACTED]

The applicant's adoptive mother's U.S. certificate of naturalization, issued in Atlanta, Georgia on December 8, 2006, also reflects that she resided in the United States when the certificate was issued.

On the applicant's Form N-600K, signed by her adoptive mother on April 29, 2011, the adoptive mother lists the following time periods that she was in Liberia with the applicant:

- March 8, 2003 to April 5, 2003;
- November 26, 2003 to January 12, 2004;
- April 30, 2004 to April 18, 2005;
- July 8, 2005 to February 27, 2006;
- April 8, 2006 to August 3, 2006;
- December 7, 2006 to December 23, 2006;
- July 6, 2008 to August 26, 2009;
- September 29, 2009 to February 4, 2011.

The adoptive mother's U.S. and Liberian passports are also contained in the record. Liberian visitor visa documentation contained in the adoptive mother's U.S. passport reflects that she was issued two single entry Liberian visitor visas, valid February 9, 2007 to May 9, 2007, and September 10, 2008 to December 30, 2008; and one multiple entry visitor visa, valid September 18, 2009 to September 18, 2010. Corresponding Liberian admission stamps reflect that she was admitted into Liberia as a visitor on February 10, 2007, for 60 days, and on September 18, 2008, for 30 days. She was also admitted into Liberia on January 19, 2011, for 60 days, and on August 10, 2011, for 30 days.²

Upon review, the AAO finds that the applicant has failed to establish by a preponderance of the evidence, that she lived in the physical custody of her U.S. citizen adoptive mother for at least two years, or that she lives abroad in the physical custody of her U.S. citizen parent, as required under sections 101(b)(1)(E)(i) and 322 of the Act.

In ascertaining the evidentiary weight of affidavits, the Service must determine the basis for the affiant's knowledge of the information to which she or he is attesting; and whether the statement is plausible, credible,

² The passports contain several other exit and entry stamps; however, many of the stamps do not legibly reflect dates, whether they are admission or departure stamps, or from which country the stamp was issued. These stamps therefore cannot be reliably used as evidence of the adoptive mother's presence in Liberia.

and consistent both internally and with the other evidence of record. *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989). In the present matter, the affidavits contained in the record have diminished evidentiary weight. The statements lack material detail regarding the dates and places that the adoptive mother lived with the applicant. Moreover, assertions that the applicant has been in her adoptive mother's physical custody in Liberia since November 2003 are contradicted by other evidence in the record. For example, the adoptive mother's U.S. passport reflects that her admissions into Liberia since 2007 have been as a visitor to the country, with permission to remain only between 30 to 60 days at a time. Evidence that the applicant's adoptive mother sub-leased an apartment in 2003 and later co-purchased property in Liberia also fails to establish that the applicant has resided with her adoptive mother, as the evidence is contradicted by the adoptive mother's apartment lease in the State of Georgia during the same time period, and is also contradicted by the adoptive mother's Georgia State residence claims for naturalization and Form I-130 purposes. It is noted that the treatment dates contained on the applicant's medical documents conflict with Liberian passport stamp dates for the applicant's adoptive mother and dates listed on the applicant's Form N-600K. Furthermore, while business ownership evidence demonstrates that the applicant's adoptive mother established businesses in Liberia in 2004 and 2009, the evidence does not establish that the adoptive mother works at the businesses, or that she resides in Liberia with the applicant, and affidavit statements by the adoptive mother indicate that she also works at [REDACTED] in the United States. School record evidence also fails to demonstrate that the applicant lives in Liberia with her adoptive mother, as the evidence contains illegible parent/guardian signatures; does not state where the applicant lives, or with whom; and contains the applicant's pre-adoption last name.

The regulation provides at 8 C.F.R. § 341.2(c) that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. In the present matter, the applicant has failed to meet her burden of establishing that she lived in the physical custody of her U.S. citizen adoptive mother for at least two years, or that she lives abroad in the physical custody of her U.S. citizen parent, as required under section 322 of the Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.