



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF N-G-

DATE: JAN. 13, 2016

APPEAL OF NEWARK FIELD OFFICE DECISION

APPLICATION: FORM N-600K, APPLICATION FOR CITIZENSHIP AND ISSUANCE OF
CERTIFICATE UNDER SECTION 322

The Applicant, a native and citizen of Poland, seeks a Certificate of Citizenship. *See* Immigration and Nationality Act (the Act) § 322, 8 U.S.C. § 1433. The Director, Newark Field Office, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The record reflects that the Applicant was born on [REDACTED] in Poland, to married parents. The Applicant's parents later divorced on [REDACTED] 2002. The Applicant's father became a U.S. citizen through naturalization on November 19, 2013. On June 27, 2015, the Applicant was admitted to the United States as a lawful permanent resident child of a U.S. citizen (IR-2).

On May 29, 2015, the Director denied the Applicant's Form N-600K, Application for Citizenship and Issuance of Certificate under Section 322, as the Applicant was residing in Poland and her father was residing in the United States.

On appeal, the Applicant's father explains that although the Applicant permanently resided in Poland with her mother at the time the Director denied her Form N-600K, she was subsequently issued an immigrant visa and would travel on June 27, 2015, to join him in the United States as a lawful permanent resident. U.S. Citizenship and Immigration Services (USCIS) records confirm that the Applicant was admitted to the United States as a lawful permanent resident child of a U.S. citizen (IR-2) on June 27, 2015.

The evidence of the record includes, but is not limited to: Applicant's birth certificate, her father's naturalization certificate, documents pertaining to the physical presence of the Applicant's father in the United States, a statement by the Applicant's father, and a copy of a plane ticket issued to the Applicant to travel to the United States.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Because the Applicant was born abroad, she is presumed to be a foreign national 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). 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 her case. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm’r 1989)).

As amended by the Child Citizenship Act (CCA) of 2000, which took effect on February 27, 2001, section 322 of the Act applies to children born and residing outside of the United States. It provides, in pertinent part:

(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. The Attorney General shall issue a certificate of citizenship to such applicant upon proof, to the satisfaction of the Attorney General, 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; . . .

(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 Attorney General 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).

The Applicant has established that she satisfies several requirements for acquisition of U.S. citizenship under section 322 of the Act. The record contains a copy of a naturalization certificate

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showing that the Applicant's father became a U.S. citizen on November 19, 2013. Furthermore, the Applicant has submitted sufficient evidence to show that her father was physically present in the United States for at least five years, two of which were after he attained the age of 14 on [REDACTED]. This evidence includes a copy of the father's social security statement for the years 2002-2013, his Wage and Tax Statement, W-2 forms, and other documents establishing that he was physically present in the United States for the requisite time period. Finally, the Applicant meets the age limit requirement of section 322(a)(3) of the Act, as her birth certificate shows that she was born on [REDACTED] and is under the age of 18 at this time.

However, the record reflects that the Applicant has been lawfully admitted to the United States for permanent residence on June 27, 2015, and there is no indication that she has departed the United States. Accordingly, the Applicant is not currently residing outside the United States in the legal and physical custody of her U.S. citizen father as required under section 322(a)(4) of the Act.¹ Moreover, the Applicant does not meet the requirement of section 322(a)(5) of the Act, in that she is not "temporarily" present in the United States pursuant to a lawful admission.² As stated above, the record reflects the Applicant was lawfully admitted to the United States for permanent residence³ on June 27, 2015, and she has been residing in the United States since that time. Therefore, although the Applicant is currently present in the United States "pursuant to a lawful admission," her presence in the United States is of a permanent rather than temporary nature as required by section 322(a)(5) of the Act. We find, consequently, that the Applicant does not satisfy the requirements of sections 322(a)(4) and (5) of the Act for derivative citizenship. The Applicant is, therefore, not eligible for issuance of certificate of citizenship pursuant to section 322 of the Act and we must dismiss her appeal.

We note that the Applicant may be eligible for issuance of certificate of citizenship under section 320 of the Act, 8 U.S.C. § 1431, which allows the automatic acquisition of U.S. citizenship when all of the following conditions have been met on or after February 27, 2001: the child has at least one parent who is a U.S. citizen by birth or through naturalization; the child is under 18 years of age; the child is a lawful permanent resident, and the child is residing in the United States in the legal and physical custody of the U.S. citizen parent.

It is the Applicant's burden to establish the claimed citizenship by a preponderance of the evidence. Section 341(a) of the Act, 8 U.S.C. § 1452(a); 8 C.F.R. § 341.2(c). The Applicant has not met the burden of proving eligibility for a certificate of citizenship under section 322 of the Act. The Applicant's appeal will therefore be dismissed, without prejudice to filing a Form N-600, Application for Certificate of Citizenship.

¹ "The 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.

² The term "temporary" means "continuing for a limited amount of time: not permanent." *Available at* <http://www.merriam-webster.com/dictionary/temporary> (last visited January 12, 2016).

³ The term "lawfully admitted for permanent residence" means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with immigration laws, such status not having changed. *See* section 101(a)(20) of the Act, 8 U.S.C. § 1101(a)(20).

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ORDER: The appeal is dismissed.

Cite as *Matter of N-G-*, ID# 15161 (AAO Jan. 13, 2016)