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U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF K-R-J-

DATE: MAR. 30, 2016

APPEAL OF SAN FERNANDO VALLEY, CALIFORNIA FIELD OFFICE DECISION

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

The Applicant, a native and citizen of Afghanistan, seeks a Certificate of Citizenship. *See* Immigration and Nationality Act (the Act) § 322, 8 U.S.C. § 1433. A U.S. citizen parent may apply for a Certificate of Citizenship on behalf of a child residing outside the United States if the child is residing in the U.S. citizen parent's custody, and that parent had been physically present in the United States for 5 years, 2 of which were after the parent turned 14 years old.

The Field Office Director, San Fernando Valley, California, denied the application. The Form N-600K, Application for Citizenship and Issuance of Certificate Under Section 322, was filed on approximately 2 months before the Applicant's 18th birthday. The Director issued two requests for additional evidence on June 25, 2015, and July 23, 2015. The Director subsequently concluded that the claimed U.S. citizen father did not establish that the Applicant was his son, and did not demonstrate that the Applicant was in his legal and physical custody. The Form N-600K was denied accordingly.

The matter is now before us on appeal. In the appeal, the Applicant contends that he has shown he is the son of his claimed U.S. citizen father through his birth certificate and school documents, and that letters from the landlord and neighbor of his claimed U.S. citizen father show that the father had legal and physical custody over him.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The record reflects that the Applicant was born in Afghanistan on The Applicant's claimed father became a U.S. citizen on October 17, 2000, and married the Applicant's mother on 2002. The Applicant asserts eligibility for issuance of a certificate of citizenship under section 322 of the Act through his U.S. citizen father.

As amended by the Child Citizenship Act (CCA) of 2000 [Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 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:
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> (1) At least one parent . . . is a citizen of the United States, whether by birth or naturalization.
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> (2) The United States citizen parent--
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> (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
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> (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.
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> (3) The child is under the age of eighteen years.
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> (4) The child is residing outside of the United States in the legal and physical custody of the [citizen parent] . . . .
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> (5) The child is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.
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> (b) Upon approval of the application (which may be filed from abroad) and, except as provided in the last sentence of section 337(a) [of the Act], 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.

The regulation at 8 C.F.R. § 322.1 states the circumstances under which a U.S. citizen parent may be presumed to have legal custody of a child, that is, to have responsibility for and authority over a child:

> (1) For the purpose of the CCA, the Service will presume that a U.S. citizen parent has legal custody of a child, and will recognize that U.S. citizen parent as having lawful authority over the child, absent evidence to the contrary, in the case of:

(i) A biological child who currently resides with both natural parents (who are married to each other, living in marital union, and not separated),

(ii) A biological child who currently resides with a surviving natural parent (if the other parent is deceased), or

(iii) In the case of a biological child born out of wedlock who has been legitimated and currently resides with the natural parent.

(2) 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. In the case of a child of divorced or legally separated parents, the Service will find a U.S. citizen parent to have legal custody of a child, for the purpose of the CCA, where there has been an award of primary care, control, and maintenance of a minor child to a parent by a court of law or other appropriate government entity pursuant to the laws of the state or country of residence. The Service will consider a U.S. citizen parent who has been awarded "joint custody," to have legal custody of a child. There may be other factual circumstances under which the Service will find the U.S. citizen parent to have legal custody for purposes of the CCA.

II. ANALYSIS

The record reflects that the Applicant's claimed father became a naturalized U.S. citizen on October 17, 2000, prior to the Applicant's 18th birthday, and the Applicant submitted evidence to establish that his claimed father was physically present in the United States for a period totaling not less than 5 years, at least 2 of which were after he attained the age of 14 years. Therefore, the Applicant has potentially satisfied the first and second requirement of section 322 of the Act for issuance of a certificate of citizenship.

At issue is whether the Applicant has shown that a father and son relationship exists between the Applicant and his claimed father, as required under section 322 of the Act. Also at issue is whether the Applicant has shown that he is residing outside of the United States in the legal and physical custody of his claimed U.S. citizen father, and whether the Applicant can meet the age requirements specified under section 322 of the Act.

The Applicant indicates that he is the biological son of his claimed U.S. citizen father, and submitted evidence in support. With the Form N-600K, the Applicant submitted an identity document dated 2011, a birth certificate and birth registration card issued on March 6, 2015, and a school record dated July 1, 2015. Each of these documents indicated the name of the Applicant's claimed father as his father. On appeal, the Applicant resubmits a copy of the 2015 birth certificate and birth registration card, additional school documents from 2013 and 2014, and affidavits from a neighbor and the owner of the house where the Applicant's claimed father lives in Afghanistan.

The Applicant further indicates that he was in the legal and physical custody of his claimed father, and contends that the birth documents dated 2011 and 2015, the school documents, and the affidavits submitted to the record establish his claimed father's legal and physical custody over him.

The Director initially found that the evidence submitted did not establish that a parent-child relationship exists between the Applicant and his claimed father, and moreover contradicted information that the Applicant's claimed father provided in his Form N-400, Application for Naturalization, filed on October 25, 1999. The Director also found that the Applicant did not establish that his claimed father had legal and physical custody of the Applicant. The Director issued two Request for Evidence (RFE) letters to the Applicant on June 25, 2015, and July 23, 2015, for further evidence to address these issues. After receiving responses to the RFEs, the Director determined that the Applicant did not establish eligibility for a certificate of citizenship under section 322 of the Act.

The evidence in the record, including the evidence initially submitted with the Form N-600K, and additional evidence submitted on appeal, does not establish that the Applicant qualifies for a certificate of citizenship under section 322 of the Act.

A. Parent and child relationship

Section 322 of the Act requires the Applicant to establish that he has a parent who is a citizen of the United States; specifically, that a father and son relationship exists between the Applicant and his claimed U.S. citizen father. We find the record does not support a conclusion that such a relationship exists.

The record indicates that the Applicant was born on The Applicant submits what purports to be a birth certificate and birth registration card. The date of issue of this document is March 6, 2015, when the Applicant was year of age. The Applicant also submits an identification document issued when he was years old, in 2011. Both these documents, along with school records from 2013, 2014, and 2015, indicate that the Applicant's claimed father is his father.

However, there is no evidence in the record that a contemporaneous birth record was established for the Applicant near the time of his birth. The Board of Immigration Appeals (the Board) found that the same evidentiary weight does not attach to a delayed birth certificate as would attach to one contemporaneous with the actual event. *See Matter of Lugo-Guadiana*, 12 I&N Dec. 726, 729 (BIA 1968). A delayed certificate must be evaluated in light of other evidence in the record and in light of the circumstances of the case. *See Matter of Bueno-Almonte*, 21 I&N Dec. 1029, 1033 (BIA 1997). A delayed birth certificate, even where unrebutted by contradictory evidence, will not in every case establish an applicant's status as United States citizen. When United States citizenship is sought to be established through a delayed birth certificate each case must be decided on its own facts with regard to the sufficiency of the evidence presented as to an applicant's birthplace. *See Matter of Serna*, 16 I&N Dec. 643 (BIA 1978).

The Board has stated it has a reluctance to accord delayed birth certificates the same weight it would give birth certificates issued at the time of birth due to the potential for fraud. *See, e.g., Matter of Ma*, 20 I&N Dec. 394 (BIA 1991). In *Matter of Serna*, 16 I&N Dec. 643 (BIA 1978), a case involving the establishment of United States citizenship through the presentation of a delayed United States birth certificate, the Board explained this approach. The Board acknowledged that a delayed birth certificate might be the only type of birth certificate available to some applicants and noted that it would be unjust to penalize these persons; however, the Board recognized that "there can be little dispute that the opportunity for fraud is much greater with a delayed birth certificate." *Matter of Serna*, *supra*, at 645. Given these competing concerns, the Board ruled that a delayed birth certificate, even when unrebutted by contradictory evidence, will not in every case establish the Applicant's status as a United States citizen. Each case must be decided on its own facts with regard to the sufficiency of the evidence presented. *Id.*

In this case, the information on the Applicant's paternity contained in the late-issued birth certificate is directly contradicted by other evidence. The record indicates that the Applicant's claimed father filed Form N-400, Application for Naturalization, on October 25, 1999, and was interviewed under oath for naturalization on August 10, 2000. Both on the form and during the interview, the Applicant's claimed father indicated that he had no children. Although the Director noted this discrepancy in the denial, the Applicant has not addressed it on appeal.

In addition, information in the Applicant's claimed father's Form N-400 indicates that the father was not in Afghanistan during relevant time periods. On the Form N-400, the Applicant's claimed father indicated that between the time he became a permanent resident in 1994 and the date he filed for naturalization, he was absent from the United States on three occasions to travel to Pakistan: November 1, 1994, to April 1, 1995; October 4, 1997, to February 6, 1998; and February 2000 to May 2000. The information on the Form N-400 indicates that the Applicant's claimed father was in the United States during the relevant time period before the Applicant was born. There is no documentation showing the Applicant's mother was with the Applicant's claimed father in the United States at that time. As such, we do not find there is sufficient documentation showing that the Applicant's mother and father were in the same country during the relevant time period before the Applicant's birth.

We further note that at the time of the Applicant's birth on , the Applicant's claimed father was married to a person other than his mother. The Applicant's claimed father divorced that person on , 1998. The record indicates that the Applicant's claimed father married his mother on 2002, when the Applicant was years of age. The marriage certificate indicates that the Applicant's mother was widowed. There is no indication in the record whether the Applicant's mother had any children with her deceased first husband.

Based on the lack of documentation contemporaneous with the Applicant's birth showing the Applicant's claimed father as his father, and evidence in the record indicating that a biological relationship does not exist, the Applicant did not establish by a preponderance of the evidence that a father and son relationship exists between him and his claimed father.

B. Legal custody

The regulations provide that legal custody "refers to the responsibility for and authority over a child." *See* 8 C.F.R. § 320.1. The regulation at 8 C.F.R. § 322.1 provides that a parent is presumed to have legal custody of a biological child. However in this particular case, as we indicated above, the Applicant has not established that a biological relationship exists between him and his claimed father. Therefore, the Applicant's claimed father has not established that he has presumed legal custody of the Applicant.

The Applicant submits evidence in the form of a 2011 identity document, a 2015 birth record, and school documents from 2013, 2014, and 2015, which indicate that his claimed father is his father. However, there are no court documents demonstrating that the Applicant's claimed father has legal custody of the Applicant, and there is no civil documentation contemporaneous with the Applicant's date of birth to indicate that the Applicant's claimed U.S. father has legal custody of the Applicant.

Because the Applicant did not establish that a father and son relationship exists between him and his claimed U.S. citizen father, we do not need to reach the issue of whether his claimed father had legal custody over the Applicant.

C. Physical custody

Neither the Act nor the regulations define the term "physical custody." However, "physical custody" has been considered in the context of "actual uncontested custody" in derivative citizenship proceedings and interpreted to mean actual residence with the parent. *See Bagot v. Ashcroft,* 398 F.3d 252, 267 (3rd Cir. 2005) (father had actual physical custody of the child where the child lived with him and no one contested the father's custody).

The Applicant submitted evidence to show that he was in the physical custody of his claimed father in Afghanistan. The evidence includes affidavits from the owner of the house in Afghanistan, and a neighbor of the Applicant's claimed father. Both affidavits state that the Applicant's father and his whole family live together at that residence; however, neither affidavit identifies what constitutes the "whole family" of the Applicant's claimed father, nor does either affidavit list the family members residing at the house or indicate that the Applicant is residing with his claimed father.

The 2015 school document indicates that the Applicant is residing at the address of his claimed father. In addition, the Applicant's claimed father submits an affidavit stating that the Applicant resides with him in Afghanistan.

However, because the Applicant did not establish that a father and son relationship exists between him and his claimed U.S. citizen father, we do not need to reach the issue of whether his claimed father had physical custody over the Applicant.

III. AGE REQUIREMENTS OF SECTION 322 OF THE ACT

The record reflects that the Applicant reached his 18th birthday on [redacted] Under section 322(a)(3) of the Act, requirements under sections 322(a)(5) and 322(b) of the Act must occur before an Applicant reaches the age of 18. Accordingly, the Applicant is statutorily ineligible for a certificate of citizenship because he does not meet the age limitation set forth in section 322(a)(3) of the Act.

IV. CONCLUSION

In light of the above, the Applicant has not demonstrated that a father and son relationship exists between the Applicant and his claimed father, that the Applicant's claimed father had legal and physical custody of the Applicant, and that the Applicant meets the age requirements set forth in the statute. Accordingly, the Applicant has not established eligibility for issuance of a Certificate of Citizenship pursuant to section 322 of the Act.

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 that burden. Accordingly, we dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of K-R-J-*, ID# 15865 (AAO Mar. 30, 2016)