U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF K-C-R-L-

DATE: DEC. 14, 2017

APPEAL OF SAN BERNARDINO, CALIFORNIA FIELD OFFICE DECISION

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

The Applicant's mother, a citizen of the United States, seeks a Certificate of Citizenship on behalf of the Applicant, who was born in Taiwan in [redacted]. *See* Immigration and Nationality Act (the Act) section 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 of the United States if the child is residing in that parent's legal and physical custody, and the parent, or the parent's U.S. citizen parent (the child's grandparent), had been physically present in the United States for five years, two of which were after the parent turned 14 years old.

The Director of the San Bernardino, California, Field Office denied the application, concluding that the record did not establish, as required, that the Applicant was residing outside of the United States in the legal and physical custody of his U.S. citizen mother.

On appeal, the Applicant's mother states she incorrectly represented she resided in the United States while the Applicant's residence was in Taiwan. She submits additional evidence and asserts that the Applicant lives with her in Taiwan and is eligible for a Certificate of Citizenship under section 322 of the Act.

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

I. LAW

The record reflects that the Applicant was born to married parents in Taiwan in [redacted]. His mother was born in Taiwan in 1979, but obtained U.S. citizenship through naturalization in 2005. The Applicant's father is not a U.S. citizen. The Applicant's maternal grandmother, born in Taiwan in 1950, became a U.S. citizen through naturalization in 2005.

Section 322 of the Act, as amended by the Child Citizenship Act of 2000 (CCA, Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000)), applies to children of U.S. citizens born and residing outside of the United States. It 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.[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:
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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 . . . 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.

Absent evidence to the contrary, U.S. Citizenship and Immigration Services (USCIS) will presume that a U.S. citizen parent has legal custody of a child, and will recognize that U.S. citizen as having

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[1] Section 320 of the Act, 8 U.S.C. § 1432, as amended by the CCA, provides that a child under 18 years of age who has one U.S. citizen parent and *is residing in that parent's legal and physical custody in the United States as a lawful permanent resident* will automatically derive U.S. citizenship. The record in this case does not indicate that the Applicant is a lawful permanent resident of the United States. Accordingly, we do not address his eligibility for derivative citizenship under section 320 of the Act.

lawful authority over the child, in the case of a biological child who currently resides with both natural parents (who are married to each other, living in marital union, and not separated). 8 C.F.R. § 322.1(1)(i)

II. FACTS AND PROCEDURAL HISTORY

The record reflects that the Applicant's mother and her own mother, the Applicant's grandmother, were admitted to the United States for permanent residence in April 1999. In 2005 they both became U.S. citizens through naturalization. The Applicant's mother married the Applicant's father in Taiwan in 2010, and the Applicant was born in [redacted]. The same year, the Applicant's mother filed the instant Form N-600K to obtain a Certificate of Citizenship for the Applicant, indicating that she resided in California with the Applicant's grandmother and the Applicant's father, while the Applicant resided in Taiwan. She also submitted evidence that the grandmother has been living in California following her naturalization in 2005. The Applicant's mother states she and the Applicant have always resided together in Taiwan.

III. ANALYSIS

There is no dispute that the Applicant meets some of the requirements under section 322 of the Act, as he is under the age of 18, he has a U.S. citizen parent, and the evidence is sufficient to show that the Applicant's U.S. citizen grandmother met the five-year U.S. physical presence requirement. The issue before us is whether the Applicant's mother has demonstrated that the Applicant is residing outside of the United States in her legal and physical custody, as required in section 322(a)(4) of the Act.

The Director concluded that the Applicant did not meet this requirement, because the information on the Form N-600K indicated the Applicant resided in Taiwan while his mother and father lived in the United States.

On appeal, the Applicant's mother states that this information was incorrect, and that she listed her mother's U.S. address on the Form N-600K solely for the convenience of any future communication with USCIS. She claims she has always resided with the Applicant outside of the United States. In support, she submits a copy of a utility bill from Taiwan and evidence that the Applicant received vaccinations in Taiwan in 2015 and 2016.

We find, however, that these documents alone are insufficient to establish that the Applicant is currently residing outside of the United States in the legal and physical custody of his mother.

A. Legal and Physical Custody Under Section 322 of the Act

As stated above, legal custody is presumed in case of a biological child who currently resides with both natural parents who are married to each other and living in marital union. 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. Aschcroft*, 398 F.3d 252, 267 (3d Cir. 2005); *Matter of M-*, 3 I&N Dec. 850, 856 (BIA 1950).

The Applicant's mother represented on the Form N-600K that she and the Applicant's father have been married since in 2010, and the household registration transcript in file confirms this representation. However, the evidence is insufficient to show that the Applicant's parents reside together in Taiwan and that the Applicant resides with them. The Applicant's mother indicated on the Form N-600K that the Applicant's father was residing in California. USCIS records reflect he was admitted to the United States for permanent residence with the Applicant's older sibling in September 2015. The Applicant's mother does not claim on appeal that her representation regarding the residence of the Applicant's father in California was incorrect, or that he currently resides with her and the Applicant in Taiwan, as required to meet the legal custody presumption in 8 C.F.R. § 322.1(1)(i).

In addition, the mother's statement, that she had always resided with the Applicant in Taiwan, is inconsistent with the representations and information she provided in connection with the immigrant visa proceedings of the Applicant's older sibling. As stated above, the Applicant's sibling and her father were both admitted to the United States in September 2015 to reside with the mother in California. The Applicant's mother now submits evidence that between 2013 and 2016 she paid water bills issued for an apartment in Taiwan. Although this indicates that the mother may have rented rent or owned an apartment in Taiwan, it does not demonstrate, absent additional evidence, that the Applicant is residing there with both parents, who are living together in marital union. Accordingly, the utility bill and the vaccination record alone are insufficient to establish that the Applicant meets the legal custody presumption in 8 C.F.R. § 322.1(1)(i), or that he satisfies the physical custody requirement through the actual residence with his mother, as required in section 322(a)(4) of the Act. For this reason, we conclude that the Applicant is not eligible for issuance of a Certificate of Citizenship pursuant to section 322 of the Act.

B. Acquisition of U.S. Citizenship at Birth

Although the Applicant's mother applied for a Certificate of Citizenship claiming eligibility under section 322 of the Act, the record indicates that the Applicant may have acquired U.S. citizenship at birth from his mother under another provision of the Act.

As stated above, the Applicant was born abroad in [redacted] to a U.S. citizen mother and a foreign national father who were married. The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth. *See Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 n.3 (9th Cir. 2001) (internal quotation marks and citation omitted). Acquisition of U.S. citizenship in the Applicant's case is governed by current section 301(g) of the Act, 8 U.S.C. § 1401(g), as in effect since 1986. That section provides that a person born outside of the United States of one foreign national and one U.S. citizen parent is a national and citizen of the United States at birth, provided that, prior to the

birth of such person, the U.S. citizen parent was 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 the parent's 14th birthday.

Here, the record shows that the Applicant's mother was a U.S. citizen at the time the Applicant was born. Furthermore, USCIS records show that the mother was admitted to the United States for permanent residence in 1999, when she was 20 years old, and that she was naturalized in the United States six years later. If, as the record indicates, the Applicant's mother was physically present in the United States for at least five years before the Applicant's birth in she may have transmitted U.S. citizenship to the Applicant at birth under section 301(g) of the Act.

If the Applicant believes he may be eligible for issuance of a Certificate of Citizenship based on acquisition of U.S. citizenship at birth under section 301(g) of the Act, he may file Form N-600, Application for Certificate of Citizenship, with USCIS, if he is in the United States. *See* section 103(a)(1) of the Act, 8 U.S.C. § 1103. If the Applicant is residing overseas, he should make a claim of U.S. citizenship before the U.S. Department of State. *See* section 104(a)(1) of the Act, 8 U.S.C. § 1104. In either case the Applicant must submit appropriate documentation to support the citizenship claim, as provided in the form instructions, including evidence that his mother met the requisite U.S. physical presence requirement before he was born.

IV. CONCLUSION

The evidence is insufficient to demonstrate that the Applicant is residing outside of the United States in the legal and physical custody of his U.S. citizen mother and that he is therefore eligible for issuance of a Certificate of Citizenship under section 322 of the Act. Although we dismiss the appeal for this reason, the dismissal does not preclude the Applicant from making a U.S. citizenship claim before USCIS or the U.S. Department of State based on other citizenship provisions of the Act.

ORDER: The appeal is dismissed.

Cite as *Matter of K-C-R-L-*, ID# 715738 (AAO Dec. 14, 2017)