U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF A-C-A-

DATE: NOV. 22, 2017

APPEAL OF MIAMI, FLORIDA FIELD OFFICE DECISION

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

The Applicant's father, a citizen of the United States, seeks a Certificate of Citizenship on behalf of the Applicant, who was born in Brazil 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 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 5 years, 2 of which were after the parent turned 14 years old.

The Director of the Miami, Florida, Field Office denied the application, concluding that the evidence was insufficient to establish the claimed biological relationship between the Applicant's father and her U.S. citizen grandmother, and to show that the grandmother had the requisite physical presence in the United States.

On appeal, the Applicant's father submits a copy of his birth certificate and asserts that the Director erred in not approving the Form N-600K, Application for Citizenship and Issuance of Certificate Under Section 322. He claims he has demonstrated that he was born to a U.S. citizen mother, the Applicant's grandmother, who met the physical presence requirements of section 322 of the Act, and that a Certificate of Citizenship should therefore be issued to the Applicant.

Upon *de novo* review, we find that the Applicant's father met his burden of proof in demonstrating that his mother, the Applicant's grandmother, is a U.S. citizen who satisfied the physical presence requirement of section 322 of the Act. Because the reason for the denial has been overcome, we will remand the matter to the Director for further proceedings consistent with the foregoing decision.

I. LAW

The record reflects that the Applicant was born to married parents in Brazil in [redacted]. Her mother is a native and citizen of Brazil. Her father was born in Brazil, but he is a U.S. citizen, as evidenced by copies of his Form FS-545, U.S. Department of State certification of birth and U.S. passports. The Applicant's father claims that his mother, the Applicant's grandmother, was born in the United States in [redacted] 1929, and that she lived in the United States until 1952. He represented on the

Form N-600K that he is currently residing in Brazil with the Applicant and his spouse, the Applicant's mother.

Section 322 of the Act, 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)), 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. 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.
>
> (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 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)

Except where a different standard is specified by law, an applicant must prove eligibility for the requested immigration benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Under the preponderance of the evidence standard, the evidence must demonstrate that the applicant's claim is "probably true." *Id.* at 376.

II. ANALYSIS

The issue before us is whether the Applicant's U.S. citizen father has demonstrated that his mother, the Applicant's grandmother, is a U.S. citizen who was physically present in the United States for at least 5 years, and that 2 of those years were after her 14th birthday in [redacted] 1943.[1]

The Director concluded that although the father's certification of birth demonstrated that he was a U.S. citizen, it was insufficient to establish the relationship between him and the individual listed on the Applicant's birth certificate as her grandmother, because it did not include the names of the father's parents. The Director also found the evidence insufficient to show that the grandmother was physically present in the United States for the requisite time period.

On appeal, the Applicant's father submits a copy of his Brazilian birth certificate and asserts that he has now clearly shown that the Applicant's grandmother is his U.S. citizen mother. In addition, he avers that his mother's U.S. school and payroll records clearly establish that she was present in the United States for at least five years, and that two of those years were after she was 14 years old.

Upon review of the entire record, including the evidence submitted on appeal, we find that the Applicant's father has overcome the reasons for the denial of the Form N-600K, as he has demonstrated that his mother is a U.S. citizen, and that she met the U.S. physical presence requirements set forth in section 322(a)(2)(B) of the Act.

A. Applicant's U.S. Citizen Grandparent

As stated above, the Director found that the father's birth certification alone was insufficient to support his claim of a parent-child relationship between him and the Applicant's U.S. citizen grandmother. The father now submits a copy of his Brazilian birth certificate, which identifies both

[1] There is no dispute that the Applicant has already satisfied some of the eligibility criteria for issuance of a Certificate of Citizenship under section 322 of the Act, as the evidence in the record, including copies of U.S. passports, birth, and marriage certificates, shows that she has a U.S. citizen parent, and that she is currently under 18 years of age and residing outside of the United States.

his parents. The certificate, when considered with the birth and marriage certificates he previously provided, shows the biological parent-child relationship between the Applicant and her father, and between the Applicant's father and her paternal grandmother. Moreover, the grandmother's birth certificate and copies of her U.S. passports establish that she is a U.S. citizen. We find this evidence sufficient to demonstrate that the Applicant's paternal grandmother is a U.S. citizen, as claimed.

B. Physical Presence of the U.S. Citizen Grandparent in the United States

The next question is whether the Applicant's father has shown that the Applicant's grandmother meets the physical presence conditions in section 322 of the Act.[2] The father represented on the Form N-600K that his U.S. citizen mother lived in the United States since her birth in [redacted] 1929 until October 1952, a period of over 23 years, and that she subsequently visited the United States several times. The evidence supports these representations. The record contains copies of the grandmother's school records, which show that she attended high school in the United States for over four years, from 1943 through 1947, until she graduated. Moreover, a copy of the grandmother's payroll statement establishes that she was employed in the United States for at least one year, from April 1951 through May 1952. Lastly, the grandmother's marriage certificate shows that she was married in the United States in October 1952. We find these documents alone are sufficient to demonstrate that the Applicant's grandmother was physically present in the United States for at least 5 years, and that 2 of those years were after her 14th birthday in [redacted] 1943. Accordingly, the Applicant satisfies the section 322(a)(2)(B) of the Act regarding the U.S. citizen grandparent's physical presence in the United States.

C. Residence Outside the United States in the Legal and Physical Custody of the U.S. Citizen Parent

Although not specifically addressed in the Director's decision, the evidence further indicates that the Applicant residing abroad in the legal and physical custody of her U.S. citizen father. 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).

Here, the Applicant's birth certificate identifies her biological parents, and the parents' marriage certificate establishes that they were married in 1998. In addition, the record reflects that the parents remain married and that they currently reside with the Applicant in Brazil at the same address. Accordingly, absent evidence to the contrary, we find that the Applicant meets the legal custody presumption in 8 C.F.R. § 322.1(1)(i), and that she also satisfies the physical custody requirement through actual residence with her father, as required in section 322(a)(4) of the Act.

[2] The Applicant's father does not claim, and the record does not contain evidence that he was physically present in the United States for five years, as required under section 322(a)(2)(A) of the Act.

D. Temporary Presence in the United States Pursuant to a Lawful Admission and Maintenance of Such Status

Section 322(a)(5) of the Act requires the Applicant to be temporarily present in the United States pursuant to a lawful admission to receive a Certificate of Citizenship. The regulation at 8 C.F.R. § 322.4 provides that the U.S. citizen parent and the child must appear in person before a USCIS officer for examination on the application under section 322 of the Act. Because the record indicates that the Applicant and her father are in Brazil, we will remand the matter to the Director to schedule an interview on the Form N-600K.

III. CONCLUSION

The evidence demonstrates that the Applicant has a U.S. citizen father, and that her paternal U.S. citizen grandmother was physically present in the United States for a period or periods totaling not less than 5 years, at least 2 of which were after her 14th birthday. The record also reflects that the Applicant is currently residing outside the United States in the legal and physical custody of her U.S. citizen father. However, as the Applicant has not been scheduled for an interview before a USCIS officer, she has not had an opportunity to fulfill the remaining condition for issuance of Certificate of Citizenship under section 322 of the Act, which requires her temporary presence in the United States pursuant to a lawful admission, and maintenance of such status. Accordingly, we will return the matter to the Director to schedule an interview on the Form N-600K.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing opinion and for entry of a new decision.

Cite as *Matter of A-C-A-*, ID# 718794 (AAO Nov. 22, 2017)