U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-J-V-

DATE: FEB. 21, 2018

APPEAL OF ATLANTA, GEORGIA 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 her child who was born in the United Kingdom in 2012. *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 the United States if the child is residing in the U.S. citizen parent's custody, and that 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 Atlanta, Georgia Field Office denied the application, concluding the record contained insufficient evidence to demonstrate that the Applicant resides outside of the United States with her U.S. citizen mother.

On appeal the Applicant claims that although she temporarily lives in the United States, she lived in the United Kingdom with her mother until coming to this country a few days before her citizenship interview.

Upon *de novo* review, we will remand the matter for further proceedings consistent with our opinion, and for entry of a new decision.

I. LAW

The record reflects that the Applicant was born in the United Kingdom on [redacted] 2012, to married parents. Her mother is a U.S. citizen and her father is a foreign national. The Applicant claims that she resides in the United Kingdom.

Section 322 of the Act (as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), applies to children who were born and reside outside of the United States. It states, 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 Attorney General [now Secretary of the Department of Homeland Security (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

(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.

(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.

(Emphasis added.)

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 the record to 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)).

II. ANALYSIS

The issue on appeal is whether the Applicant established she meets requirements that she reside outside of the United States in the custody of her U.S. citizen parent.[1]

The Director determined that the Applicant did not satisfy this requirement based on statements made by her mother at the citizenship interview. The Applicant claims on appeal, however, that she arrived in the United States with her mother three days prior to her citizenship interview; her Form N-600K, Application for Citizenship and Issuance of Certificate, accurately reflected that she and her mother resided in the United Kingdom prior to that time; and her mother only replaced the Form N-600K information with her grandfather's U.S. address because the interviewing officer recommended she put current temporary U.S. address information on the form.[2]

We find that the Applicant has established her claims.

Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33), defines the term "residence" as "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."

Here, the record does not reflect that the Applicant's "residence" as defined by the Act, was in the United States at the time of her interview. Although the Applicant's mother, in a sworn statement, provided the grandfather's U.S. address when responding to an interview question about where she and the Applicant currently lived, she also stated that they arrived in the United States three days before their interview date, and that they would be at the grandfather's address only temporarily, between one to three months. Admission stamps on the Applicant's and her mother's passports corroborate the entry date claims. Moreover, the Applicant's Form N-600K shows that the home address initially provided for the Applicant and her mother was in the United Kingdom. In changing the information to a U.S. address, the interviewing officer noted on the form that the parents planned to stay in the United States and live with the maternal grandfather. The record, however, does not show that, throughout the adjudication of the Form N-600K, the Applicant's principal, actual dwelling place in fact, without regard to intent, was in the United States rather than in the United Kingdom.

Upon review, we find that the Applicant has overcome the basis of the Director's decision. Because the Director did not otherwise address her eligibility to derive U.S. citizenship through her mother under section 322 of the Act, we will remand the matter to the Director to review the Applicant's eligibility for a Certificate of Citizenship anew.

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[1] The Director did not address whether the Applicant met the other requirements of section 322 of the Act.
[2] The Applicant did not submit new evidence on appeal.

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

Cite as *Matter of S-J-V-*, ID# 913988 (AAO Feb. 21, 2018)