U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-J-Z-

DATE: MAY 25, 2018

APPEAL OF ATLANTA, GEORGIA FIELD OFFICE DECISION

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

The Applicant's mother, a citizen of the United States, seeks a Certificate of Citizenship on behalf of her adopted child who was born in Uganda in 2010. 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 Applicant was not in her adoptive mother's legal custody for two years prior to the filing and adjudication of the application, as required, and that she did not meet the definition of a "child" under section 101(b)(1)(E)(i) of the Act, 8 U.S.C. § 1101(b)(1).

On appeal the Applicant submits additional documentation, and claims that although she was adopted less than two years prior to the filing and adjudication of her application, she nevertheless met legal custody requirements because she lived with her adoptive mother pursuant to a foster care court order for the required time period.

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

I. LAW

The record reflects that the Applicant, who was born in [redacted] in August 2010 and currently resides there, underwent an adoption on [redacted] 2015.

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.
>
> (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).

Because the Applicant was adopted by a U.S. citizen, she falls under the provisions of section 322(c) of the Act, and must establish that she meets the requirements applicable to adopted children under section 101(b)(1) of the Act. This section provides, in pertinent part, that the term "child" includes an unmarried person under twenty-one years of age who is:

> (E)(i) a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years....

The regulation at 8 C.F.R. 322.1 defines an "adopted child" as a child adopted pursuant to a full, final and complete adoption.

The regulation at 8 C.F.R. § 103.2(b)(1) states further that an applicant for an immigration benefit must establish eligibility for the requested benefit at the time of filing the benefit request, and must continue to be eligible through adjudication.

II. ANALYSIS

The issue here is whether the Applicant has established that she resided in her adoptive mother's legal custody for at least two years prior to the filing and adjudication of her Form N-600K, as required.

The Applicant concedes on appeal that she was not adopted until [redacted] 2015, which was less than two years before the filing and adjudication of her application (in December 2016 and June 2017, respectively). She claims, however, that she met sections 101(b) and 322 of the Act legal custody requirements because she began residing with her adoptive mother in 2011, after a Ugandan court awarded her mother foster care authority. In support, she submits adoption and foster care documents, and affidavits. We find this evidence to be insufficient to establish the Applicant's assertions.

The Applicant provides no legal authority to support her claim that court-ordered foster care constitutes legal custody for section 322 of the Act purposes. Moreover, section 101(b)(E)(i) of the Act reflects that an adopted individual qualifies as a "child" only if *adopted* while under the age of sixteen. *Id.* The regulation at 8 C.F.R. § 322.1 clarifies further that for section 322 of the Act purposes, the term "adopted child" means an individual "adopted pursuant to a full, final and complete adoption." *Id.* Thus, although evidence indicates that the Applicant may have resided with her mother as a foster child for some time prior to her adoption, this does not establish that her adoptive mother obtained legal custody over the Applicant before the Ugandan court issued a full, final, and complete judgment of adoption in [redacted] 2015. Because the Applicant's [redacted] 2015 adoption occurred less than two years before the filing and adjudication of the Applicant's Form N-600K, the Applicant did not qualify as her adoptive mother's "child," and did not meet legal custody conditions set forth at section 322 of the Act at that time.

III. CONCLUSION

It is the Applicant's burden to establish her claimed citizenship by a preponderance of the evidence. *See* section 341(a) of the Act. In this case, the Applicant provided insufficient evidence to establish that she met the two-year legal custody requirement set forth at sections 101(b)(1)(E)(i) and 322 of

the Act. So, because she did not meet that condition at the time of filing this N-600K, the Applicant is not eligible for issuance of a Certificate of Citizenship under section 322 of the Act. Although regulations do not permit the Applicant to file another Form N-600K, she may file a motion to reopen or reconsider as provided in 8 C.F.R. §§ 103.5 and 322.5(c).

ORDER: The appeal is dismissed.

Cite as *Matter of S-J-Z-*, ID# 1049291 (AAO May 25, 2018)