U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF V-W-

DATE: JULY 30, 2019

APPEAL OF MOUNT LAUREL, NEW JERSEY FIELD OFFICE DECISION

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

The Applicant's claimed adoptive father, a citizen of the United States, seeks a Certificate of Citizenship, on behalf of the Applicant who was born in Cambodia. Section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The Director of the Mount Laurel, New Jersey Field Office denied the application, concluding the Applicant provided insufficient evidence to establish that she was the "adopted child" of a U.S. citizen parent, as required under section 322 of the Act.

On appeal the Applicant submits additional evidence, and claims she meets conditions to derive U.S. citizenship through her adoptive father.

Upon *de novo* review, we will withdraw the Director's decision and remand the matter for the entry of a new decision.

I. LAW

The record reflects that the Applicant was born in Cambodia on [redacted] 2005, and she currently resides in Cambodia. The Applicant states that she was adopted by her claimed U.S. citizen father 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, like the Applicant, 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 . . .
>
> (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 is claiming citizenship based on an adoptive U.S. citizen parent relationship, section 322(c) of the Act applies to her case. She must therefore meet relevant adopted child conditions under section 101(b)(1) of the Act, 8 U.S.C. § 1101(b)(1).

Section 101(b)(1)(E)(i) of the Act generally applies to countries that are not signatories to the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption (Hague Convention). This provision states in pertinent part, that the term "child" includes "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."

Section 101(b)(1)(G) of the Act, 8 U.S.C. § 1101(b)(1)(G), applies to countries that are signatories to the Hague Convention, and provides in pertinent part that the term "child" includes:

> a child, under the age of sixteen at the time a petition is filed on the child's behalf . . . who has been adopted in a foreign state that is a party to the [Hague Convention] . . . or who is emigrating from such a foreign state to be adopted in the United States. . . .

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).

II. ANALYSIS

The issue on appeal is whether the Applicant has demonstrated that she qualifies as an "adopted child" under section 101(b)(1) of the Act, as required. (If this is established, the Applicant must then demonstrate that she meets section 322(a) and (b) conditions to derive citizenship through the adoptive father.)

The Director determined, based on U.S. Department of State (DOS) information, that Cambodian intercountry adoptions have not been recognized for immigration purposes since December 2001, and that the Applicant therefore did not qualify as an "adopted child" for immigration purposes.

The Applicant contends on appeal that her Cambodian adoption is legally valid for U.S. immigration purposes. Specifically, she asserts, in part, that her father adopted her through a Cambodian *intra*country adoption process, the definition of an "adopted child" set forth in section 101(b)(1)(E) of the Act therefore applies to her case, and that she satisfies this definition and all other requirements to derive citizenship through her adoptive father under section 322 of the Act. The Applicant submits correspondence from the Cambodian Ministry of Social Affairs, Veterans and Youth Rehabilitation and the U.S. Embassy in Cambodia to corroborate claims that these entities consider her *intra*country adoption in Cambodia to be legally valid.[1] The record also contains birth certificate and adoption documents, and employment, residence, and citizenship information.

Upon review, we find that the DOS policy that the Director relied on applies only to *inter*country adoptions (generally for Form I-600, Petition to Classify Orphan as an Immediate Relative, and Form I-800, Petition to Classify Convention Adoptee as an Immediate Relative, purposes.) The policy does not impact the validity of domestic *intra*country adoptions in Cambodia, such as the Applicant's.[2]

In order to qualify as a legally valid adoption for U.S. immigration purposes, the Applicant's adoption must satisfy the following three-prong test:

1) It creates a legal permanent parent-child relationship between a child and someone who is not already the child's legal parent, and
2) It terminates the legal parent-child relationship with the prior legal parent, and

[1] The Cambodian Ministry of Social Affairs, Veterans and Youth Rehabilitation letter states that the Applicant's claimed adoptive father did not meet intercountry adoption requirements, and that his adoption application would be submitted to a Cambodian court for simple child adoption processing. (We note that in some cases, simple adoptions - as distinguished from full adoptions - may not be valid for U.S. immigration purposes. *See Matter of Kong*, 14, I&N Dec. 224 (BIA 1975)). Email correspondence between a U.S. consular officer and the Applicant's claimed adoptive father reflects that he asked whether U.S. citizens are "able to do international adoptions from Cambodia under section 322" of the Act, and that a consular officer responded that "a child that is legally adopted in Cambodia following Cambodian law for a full legal adoption by a foreigner may qualify for Child Citizenship Act of 2000 – Section 322 of the INA (form N-600K)."

[2] Recent inquiries with DOS confirm that under the 2011 Civil Code of Cambodia, domestic adoptions go through the courts and not through the Ministry of Social Affairs, Veterans, and Youth Rehabilitation.

3) It does the above under the law of the country or place granting the adoption.

See USCIS Policy Memorandum PM-602-0070, *Guidance for Determining if an Adoption is Valid for Immigration and Nationality Act (INA) Purposes; Updates to Adjudicator's Field Manual (AFM) Chapters 21.4, 21.5, 21.6, 21.10 and 71.1; AFM Update Ad12-10,* p.6 (July 9, 2012). https://www.uscis.gov/laws/policy-memoranda.

We will therefore remand the matter to the Director to determine whether the Applicant's *intra*country adoption satisfies the legal validity requirements for U.S. immigration purposes, and also to address whether she met all other requirements to derive citizenship through her adoptive U.S. citizen father under section 322 of the Act.

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 V-W-*, ID# 2940863 (AAO July 30, 2019)