



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF M-V-A-V-

DATE: OCT. 11, 2019

APPEAL OF HIALEAH, FLORIDA FIELD OFFICE DECISION

APPLICATION: APPLICATION FOR CITIZENSHIP AND ISSUANCE OF CERTIFICATE
UNDER SECTION 322

The Applicant's mother seeks a Certificate of Citizenship on behalf of the Applicant, to reflect that she derived U.S. citizenship through her mother under section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The Director of the Hialeah, Florida Field Office denied the application, concluding the Applicant provided insufficient evidence to establish that her U.S. citizen grandfather was physically present in the United States for not less than five years, at least two after turning fourteen, as required under section 322 of the Act.

On appeal the Applicant submits additional evidence, and indicates that the record now sufficiently demonstrates that her grandfather met section 322 of the Act U.S. physical presence requirements.

Upon *de novo* review, we will remand the matter for proceedings consistent with this decision.

I. LAW

The record reflects that the Applicant is a minor who was born in Bolivia on [redacted] 2011, to married parents. Her mother and maternal grandfather are U.S. citizens, and her father is a foreign national. The Applicant indicates that she currently resides in Bolivia with her mother and father. She claims U.S. citizenship under section 322 of the Act, through her mother and grandfather.

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, and 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.

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 Applicant has established that she meets some of the requirements for issuance of a Certificate of Citizenship under section 322 of the Act. Her birth certificate reflects the biological parent-child relationship between the Applicant and her mother, and demonstrates that the Applicant is under 18 years of age, as required under section 322(a)(3) of the Act. Birth, marriage, and naturalization certificates also establish the biological parent-child relationship between the Applicant’s mother and maternal grandfather; and they show the mother is a U.S. citizen born in Maryland, and that the grandfather became a U.S. citizen through naturalization in April 1970. Section 322(a)(1) and (a)(2)(B) of the Act U.S. citizen parent and grandparent conditions have therefore also been met.

The issue on appeal is whether the Applicant has demonstrated, by a preponderance of the evidence, that her maternal grandfather was physically present in the United States for not less than five years, at least two after turning fourteen (in [redacted] 1957), as required by section 322(a)(2)(B) of the Act.¹ If this is established, additional issues not addressed by the Director are whether the Applicant has shown that she resides outside of the United States in her citizen mother's legal and physical custody, a condition under section 322(a)(4) of the Act; and whether she meets section 322(a)(5) of the Act temporary lawful presence in the United States requirements.²

The Applicant asserts that the evidence in the record sufficiently demonstrates that her grandfather was physically present in the United States for the required time period. In support, she submits social security earnings information; driver's license, insurance, and voter card documents; home and car repair bills; and utility, real estate tax, and medical bills. The record also contains the grandfather's birth, marriage, and naturalization information; job training certificates; and documents pertaining to the grandfather's U.S. military service.

We find upon review, including review of the new evidence submitted on appeal, that the Applicant has now sufficiently established that her maternal grandfather met the U.S. physical presence requirements set forth in section 322(a)(2)(B) of the Act.

Social Security earnings evidence for the period between 1965 and 2017 shows that the grandfather earned varying yearly incomes in the United States between 1965 and 1978 (ranging from \$1252 to \$15,447.) Although this information does not reflect where the grandfather was employed, or exactly when and how long he worked in the United States each year, an academic certificate in the record reflects that the grandfather completed an auto mechanics course at a technical institute in [redacted] in March 1967. The grandfather's naturalization certificate also demonstrates that he resided at a [redacted] Maryland address (about six miles from [redacted] at the time of his naturalization in April 1970; and a review of his naturalization application (filed in March 1970) shows he indicated at that time that he lived at the [redacted] Maryland address since May 1965. In addition, U.S. military records reflect the grandfather's honorable service in the U.S. Army between February 1969 and September 1970, show that he had the [redacted] Maryland address when he enlisted in the Army in 1969. His marriage certificate reflects further that he married in the state of Maryland in November 1970, and that he listed the [redacted] Maryland address as his residence at that time. The record also contains a certificate that the grandfather received for completing Department of Labor job training in [redacted] Maryland (about five miles from [redacted] in January 1972, and birth certificate evidence shows that the grandfather's daughter (the Applicant's mother) was born in Maryland in [redacted] 1976.

We find that the totality of this evidence establishes that it is probably true that the Applicant's grandfather was physically present in the United States for at least five years between 1965 and 1978,

¹ The Applicant does not claim that his mother was physically present in the United States for the time period required under section 322(a)(2)(A) of the Act, and the record does not contain evidence to demonstrate such physical presence.

² We note that the Applicant was admitted into the United States as a lawful permanent resident in January 2016, a status which generally indicates permanent residence in the United States. An individual may be found to have abandoned his or her lawful permanent resident status if the individual moves to another country intending to live there permanently. Lawful permanent residents who reside outside the United States who have abandoned their status should file a Form I-407, Record of Abandonment of Lawful Permanent Resident Status. See <https://www.uscis.gov>.

all of which occurred after his 14th birthday. In addition, driver's license; insurance and voter card documents; home and car repair bills; and utility, real estate tax, and medical bills in the record all list the grandfather's address in [redacted] Florida, and sufficiently establish his physical presence in Florida for an additional two years in 2016 and 2017.

Because the Applicant sufficiently demonstrated that her grandfather was physically present in the United States for not less than five years, at least two after attaining the age of fourteen, as required under section 322(a)(2)(B) of the Act, the Applicant has overcome the grounds of the Director's denial.

The Director did not address whether the Applicant established that she resides outside of the United States in her citizen mother's legal and physical custody, a condition under section 322(a)(4) of the Act. The Director also did not address whether the Applicant meets section 322(a)(5) of the Act temporary lawful presence in the United States requirements. We are therefore returning the matter to the Director to allow the Applicant an opportunity to submit related evidence; for scheduling of an interview, if appropriate; and for issuance of a new decision.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

Cite as *Matter of M-V-A-V-*, ID# 5357513 (AAO Oct. 11, 2019)