U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28580738

Date: NOV. 20, 2023

Appeal of Miami, Florida Field Office Decision

Form N-600K, Application for Citizenship and Issuance of Certificate Under Section 322

The Applicant seeks a Certificate of Citizenship under section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The Director of the Miami, Florida Field Office denied the application, concluding that the record did not establish that the Applicant satisfied the conditions for deriving U.S. citizenship at section 322 of the Act. The matter is now before us on appeal.[1] 8 C.F.R. § 103.3.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

The record reflects that the Applicant was born in Venezuela in [redacted]2005 to married parents, and that the Applicant is a citizen of Venezuela. The record contains a U.S. birth certificate showing that the Applicant's mother is a citizen of United States by birth, but it does not show that the Applicant's father is a U.S. citizen; therefore, the Applicant claims U.S. citizenship under section 322 of the Act solely through her mother.

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), provides for children under 18 years of age who were born outside of the United States to derive U.S. citizenship if they fulfill certain conditions, such as: having at least one U.S. citizen parent; the U.S. citizen parent was, or has a U.S. citizen grandparent who was, physically present in the United States or its outlying possessions for a period(s) totaling not less than five years, at least two of which were after attaining the age of fourteen years; the child is residing outside of the United States in the legal and physical custody of the U.S. citizen parent; and the child

[1] During the pendency of this appeal, we notified the Applicant that the attorney of record has become ineligible to practice and affording her an opportunity to have a new attorney or accredited representative appear on her behalf in these proceedings. Because the Applicant has not provided evidence of a new representative, we consider the Applicant to be self-represented.

is temporarily present in the United States pursuant to a lawful admission and is maintaining such lawful status.

The regulation at 8 C.F.R. § 322.1 provides that for section 322 of the Act purposes, the term "child" means a person who meets the requirements of section 101(c) of the Act; 8 U.S.C. § 1101(c). Section 101(c) of the Act defines the term "child" in pertinent part to mean "an unmarried person under twenty-one years of age." The child must have either a biological or legal adoptive relationship with the claimed U.S. citizen parent. *See Matter of Guzman-Gomez*, 24 I&N Dec. 824, 826 (BIA 2009).

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. at 376.

II. ANALYSIS

As an initial matter, the Applicant is statutorily ineligible for approval of her Form N-600K because she is no longer under the age of 18 years as section 322(a)(3) of the Act requires. Although she was under the age of 18 years when she filed the Form N-600K, she turned 18 years of age in [redacted] 2023, after the Director's [redacted] 2022 denial and prior the filing of her appeal in [redacted] 2023. Unfortunately, she is therefore statutorily ineligible for a Certificate of Citizenship under this statutory provision regardless of whether she may have fulfilled all the other requirements at section 322 of the Act before she was 18 years old.

Even if the Applicant was under the age of 18 years, she has not otherwise overcome the Director's finding and established that, prior to her own birth in [redacted] 2005, her U.S. citizen parent had at least five years of physical presence in the United States, no less than two of which were after the age of 14 years, in order to satisfy the relevant conditions at section 322(a)(2)(A) of the Act.

As an attachment to the Form N-600K, filed in December 2020, the Applicant stated that her mother had numerous periods of physical presence in the United States, beginning with an initial, continuous period from the date of the mother's birth in Michigan in [redacted] 1974 to the mother's departure from the United States in April 1976, after which the Applicant claimed that her mother's U.S. physical presence consisted of various shorter periods between March 1978 and 2018. The Applicant's evidence regarding her mother's claimed U.S. physical presence consists primarily of statements from the Applicant, her maternal grandfather, and her mother, and letters from various entities in the United States explaining that they have no record of the mother's presence at their institutions.

The Director denied the Form N-600K, concluding that the Applicant had not shown that she satisfied the conditions for deriving U.S. citizenship at section 322 of the Act because her evidence consists primarily of affidavits from her mother and maternal grandfather claiming certain periods of U.S. physical presence for her U.S. citizen parent that are not detailed or consistent and the claimed periods of physical presence are otherwise unsupported by primary evidence. The Director also stated that certain of the Applicant's claims were inconsistent with other evidence. Specifically, the Director stated that the Applicant had claimed a single period of U.S. physical presence (of about a year and

half) for her mother in [redacted] from December 4, 2000, to June 1, 2002, whereas USCIS' electronic records reflect that her mother had traveled outside the United States approximately eight times during that timeframe. Additionally, the Director noted that the Applicant had provided a U.S. Department of State Form DS-5507 from her mother and an affidavit signed by her maternal grandfather, both of which appear to have been signed in the presence of a notary public in Florida in May 2021, when the affiants were in fact *outside* the United States at the time.[2] After considering the Applicant's evidence, including the inconsistencies and lack of primary evidence corroborating the mother's U.S. physical presence claims in the affidavits, the Director concluded that the Applicant's evidence showed that the Applicant's mother was physically present in the United States but did not establish that the mother was physically present in the United States for the required 5-year period , no less than 2 of which were after the mother had turned 14 years of age (in [redacted] 1989), as required by section 322(a)(2)(A) of the Act.

Upon de novo review, we adopt and affirm the Director's decision to deny the Applicant's Form N-600K with the comments below. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight U.S. Courts of Appeals in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

On appeal, the Applicant does not dispute the Director's conclusion that her mother's U.S. physical presence claims are unsupported by primary evidence. Instead, the Applicant contends that Administrative Appeals Office (AAO) has previously accepted unsupported affidavits in other citizenship application cases that are no less sufficiently detailed and consistent as those in her case, and she includes two non-precedent decisions that the AAO had issued in 2005 and 2007. The decisions provided by the Applicant were not published as a precedent and therefore do not bind USCIS officers in future adjudications. *See* 8 C.F.R. §103.3(c). The burden of proof remains on the Applicant to establish eligibility, and here she has not satisfied that burden where the affidavits provided are not sufficiently detailed and probative regarding her U.S. citizen mother's physical presence in the United States and she has not addressed contradictory evidence that the Director discussed in the denial. As a consequence, the Applicant has not established that her U.S. citizen parent has at least five years of U.S. physical presence, no less than two of which were after the age of 14 years, as required to meet section 322(a)(2)(A) of the Act conditions.

[2] On appeal, the Applicant claims that the notary public advised that this signature arrangement is permitted under Florida law. We note that the Form DS-5507 instructions reflect that it must be signed by the affiant before a U.S. consular officer abroad and do not allow for notarization by a U.S. notary public. Moreover, the Director stated that the Applicant's mother had applied for an immigrant visa on behalf of the Applicant's sibling, D-L-,[2] in September 2007, and had provided information indicating that the mother had not in fact been physically present in the United States for the time required to transmit U.S. citizenship to D-L- at that time. Regardless, as the Form N-600K is not approvable based on the Applicant's statutory ineligibility under section 322(a)(3) of the Act, we need not reach, and therefore reserve, these two issues raised by the Director. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where the applicant did not otherwise meet their burden of proof).

III. CONCLUSION

The Applicant is not eligible for issuance of a Certificate of Citizenship under section 322(a)(3) of the Act because she is over 18 years old. Moreover, even if she were not over 18 years of age, she also has not shown that she satisfies the U.S. physical presence conditions at section 322(a)(2)(A) of the Act through her U.S. citizen parent. As such, the Applicant has not established she is eligible for a Certificate of Citizenship under section 322 of the Act.

ORDER: The appeal is dismissed.