



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

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

In Re: 22180411

Date: AUG. 26, 2022

Appeal of Santa Ana, California Field Office Decision

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

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

The Director of the Santa Ana, California Field Office denied the Form N-600K, Application for Citizenship and Issuance of Certificate Under Section 322 (Form N-600K), concluding that the evidence did not sufficiently demonstrate that the Applicant's father is (or was at the time of his death) a U.S. citizen, and that the Applicant was residing outside the United States in the legal and physical custody of his U.S. citizen father, as required under section 322 of the Act.¹

On appeal, the Applicant submits additional evidence and asserts that the record sufficiently demonstrates that his father is a U.S. citizen and that the Applicant meets the legal and physical custody conditions of section 322 of the Act.

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

I. LAW

The record reflects that the Applicant is a 13-year-old minor who was born to married parents in Syria in [REDACTED] 2008, and who currently resides in Syria. His father was born in California and is a U.S. citizen, and the record also reflects that his paternal grandmother was born in Maryland and is a U.S. citizen. There is no evidence to indicate that the Applicant's mother is a U.S. citizen, and he seeks derivative citizenship only through his father and based on his paternal grandmother's physical presence in the United States.

¹ The Director also determined that the application had not been properly filed by the Applicant's U.S. citizen parent or by his grandparent within five years of the U.S. citizen parent's death, as required by section 322 of the Act and 8 C.F.R. § 322.3(a). Specifically, the Applicant's paternal grandmother originally filed the Form N-600K on behalf of the Applicant, but the record did not establish that the Applicant's U.S. citizen father was deceased, which allows for a U.S. citizen grandparent to file the application. However, the appeal of the denial of the Form N-600K was filed by the Applicant's father, consistent with the requirements of the Act and 8 C.F.R. 322.3(a). As the evidence on appeal indicates that the claimed U.S. citizen parent is not deceased, we find that this basis for denial has been sufficiently overcome.

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 (or, at the time of his or her death, was) 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] (or, if the citizen parent is deceased, an individual who does not object to the application).

(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 . . . [and] upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this chapter of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the Attorney General [Secretary] with a certificate of citizenship.

Regulations at 8 C.F.R. § 322.1 provide 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. 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, he is presumed to be a foreign national and bears the burden of establishing his claim to U.S. citizenship by a preponderance of credible evidence. *See Matter of Baires*, 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 his case. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Applicant filed his Form N-600K in August 2021. The Director denied the application, concluding that the Applicant had not shown that his father is a U.S. citizen because the name listed on the Applicant’s Syrian birth certificate for his father, Z-A-D-, did not match the name, M-Z-A-D-, that was listed on the California birth certificate he claimed belonged to his father.² Although the Applicant also submitted California state and high school identification cards for an individual named Z-A-D-, the Director determined that the evidence was insufficient to demonstrate that Z-A-D- was the same person as M-Z-A-D-, a U.S. citizen born in California. In the record before the Director, the Applicant also submitted the following: a Syrian Family Registration certificate from 2020 listing his father as Z-A-D- and including the Applicant and his mother; a “Deed of Residence,” dated November 2021, wherein the Applicant declared that he resides at a specified address in Damascus; a sworn statement from his mother dated April 2021 affirming that she left Syria of her own accord several years earlier and placed the Applicant in the custody of his paternal grandfather; a certification from the Syrian Administration of Immigration and Passports (Syrian departure record) stating that the Applicant’s mother last departed Syria in September 2014; a Syrian marriage certificate for the Applicant’s mother and Z-A-D- showing they married in 2007; and a Syrian school attendance document for the Applicant. However, the Director determined that the record was insufficient to establish that the Applicant was residing in the legal and physical custody of his U.S. citizen father, as he claimed.

On appeal, the Applicant reasserts that his father is a U.S. citizen. In support of this assertion, he submits a copy of the biographic page of a current, unexpired U.S. passport for an individual named Z-A-D-, listing Z-A-D-’s place of birth as California. Although the name and date of birth on this passport correspond to the name and date of birth of the Applicant’s father as listed on the Applicant’s Syrian birth certificate, the record nevertheless does not establish that the individual to whom the passport belongs is the same individual who is listed as the Applicant’s father on his birth certificate as our review discloses material discrepancies in the Applicant’s evidence. First, the 2020 Syrian Family Registration certificate indicates the Applicant’s father, Z-A-D-, was born in [redacted] not California as stated in the U.S. passport provided on appeal for Z-A-D-. This also conflicts with the California birth certificate for M-Z-A-D-, which the Applicant claimed belonged to his father. Similarly, the Syrian marriage certificate for the Applicant’s parents indicates that Z-A-D- is a Syrian national, not a U.S. citizen, and indicates that he was born in [redacted]. As such, the birthplace and nationality of the Applicant’s father, as reflected on the submitted Syrian civil records, conflict with the birthplace and nationality of the individual on the U.S. passport and California birth certificate that

² Initials used to protect individuals’ identities.

the Applicant also maintains belongs to his father. As stated, the Applicant bears the burden of establishing his claim to U.S. citizenship by a preponderance of credible evidence. *See Matter of Baires*, 24 I&N Dec. at 468. Here, the Applicant has not met that burden as he has not provided sufficient evidence or explanation to resolve these material inconsistencies in the Syrian and U.S. documents he submitted to establish his father's U.S. citizenship. Therefore, he has not established that at least one of his parents is a citizen of the United States, as required by section 322(a)(1) of the Act.

On appeal, the Applicant further asserts that he is residing in the legal and physical custody of his U.S. citizen father. In support of his assertion, he submits another "Deed of Residence," dated December 2021, this time from his father, certifying that the Applicant resides with him in [redacted] city in his physical custody. The document includes a certification by the local mayor attesting to the veracity of its contents. However, even if we were to find that the Applicant's father is a U.S. citizen, the Applicant not shown that his father has legal custody of him. The regulations define the term "legal custody" to refer to "the responsibility for and authority over a child." 8 C.F.R. § 322.1. In order to establish that he is eligible for a Certificate of Citizenship, the Applicant must establish that his father has legal custody of him within the meaning of the regulation at 8 C.F.R. § 322.1 by showing that the father has responsibility for and authority over the Applicant. The regulation at 8 C.F.R. § 322.1(1)(iii) provides that a U.S. citizen parent's legal custody will be presumed, absent evidence to the contrary, in the case of a "biological child who currently resides with both natural parents (who are married to each other, living in marital union, and not separated)." However, in the case of legally separated parents, a U.S. citizen parent will be presumed to have legal custody of a child "where there has been an award of primary care, control, and maintenance of a minor child to a parent by a court of law or other appropriate government entity pursuant to the laws of the state or country of residence," or if the U.S. citizen parent has been awarded joint custody. 8 C.F.R. § 322.1(2). Although "[t]here may be other factual circumstances" under which a U.S. citizen parent will be found to have legal custody, *id.*, the Applicant bears the burden of establishing the existence of such circumstances by a preponderance of credible evidence. *See Matter of Baires*, 24 I&N Dec. at 468.

Here, the record before the Director did not show that the Applicant has satisfied the legal custody requirement for a child born in wedlock because the evidence indicates his parents are separated and no longer living in marital union and the Applicant did not submit any evidence from a court or government entity in Syria, his country of residence, granting his father legal custody, or joint custody, of him under Syrian law. *See* 8 C.F.R. § 322.1(2). On the Applicant's Form N-600K, he indicated that his parents are separated and that his biological mother left custody with his U.S. citizen father. However, in her 2021 sworn statement, the Applicant's mother stated that she left the Applicant in the custody of his paternal grandfather, not his father, after she departed Syria several years earlier. The November 2021 Deed of Residence is a declaration signed by the Applicant, which only addresses where he was then residing. However, it does not discuss legal or physical custody arrangements. Although the Family Registration certificate indicates that Z-A-D- and the Applicant are registered members of the same family, it also lists the Applicant's mother as a registered member of the family in Syria as of 2020, which is inconsistent with her sworn declaration and the Syrian departure record that indicate she departed Syria in 2014. As such, the certificate does not appear to be an accurate record and does not otherwise reflect any custody awards or arrangements upon the separation of the Applicant's parents. Consequently, we find no error in the Director's determination that the record did not establish that the Applicant is residing in the legal custody of his U.S. citizen father.

Although the Deed of Residence submitted on appeal contains a declaration from the Applicant's father that the Applicant "is in [his father's] physical custody living with [him] at the same address" and the local mayor attested to the truth of the assertions in the document, it does not specify whether his father has legal custody of him. Moreover, even if it did, the Applicant has not provided any evidence to show that the document is sufficient to establish legal custody under Syrian law. As the Applicant has not submitted any other evidence from a court or other appropriate government entity in Syria granting the Applicant's father "primary care, control, and maintenance" of the Applicant or joint custody of him, pursuant to Syrian law, or established other factual circumstances to demonstrate that his father has legal custody of him under Syrian law, he has not shown that he meets the legal custody requirements set forth at section 322(a)(4) of the Act.³

III. CONCLUSION

The Applicant has not shown that he is the child of at least one United States citizen parent and that he resides abroad in both the *legal* and physical custody of that parent, as required under section 322(a)(1) and (4) of the Act. As such, the Applicant has not shown he is eligible for a Certificate of Citizenship under section 322 of the Act.

ORDER: The appeal is dismissed.

³ As our finding that the Applicant has not demonstrated that his father is a U.S. citizen and that he resides in the legal custody of a U.S. citizen parent is dispositive, we therefore reserve and decline to reach the Applicant's appeal arguments regarding the remaining eligibility grounds, including whether he resides in the physical custody of his U.S. citizen parent. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *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 an applicant is otherwise ineligible). Additionally, we note the Director did not make a determination as to whether or not the record was sufficient to show that the Applicant's U.S. citizen parent or grandparent were physically present in the United States for not less than five years, at least two of which were after turning fourteen years of age, as required by section 322(a)(2) of the Act. Therefore, we also do not reach that issue.