



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

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

In Re: 18273212

Date: MAR. 31, 2022

Appeal of Helena, Montana Field Office Decision

Form N-600K, 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 the Applicant derived U.S. citizenship through his mother under section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The Director of the Helena, Montana Field Office denied the Form N-600K, concluding the Applicant provided insufficient evidence to establish that his U.S. citizen mother was physically present in the United States for not less than five years, at least two of which were after turning the age of 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 his mother met section 322 of the Act U.S. physical presence conditions. He also claims for the first time that he separately satisfies the U.S. physical presence conditions through his maternal grandparents and submits related evidence.

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

I. LAW

The record reflects that the Applicant was born in Canada in 2013, to married parents. His mother is a U.S. citizen by birth and is a Canadian permanent resident, and the Applicant's father is a Canadian citizen. The Applicant indicates that he currently resides in Canada with his parents and claims U.S. citizenship under section 322 of the Act solely through his 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)), 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.

(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; 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 and includes a child legitimated under the law of the child’s residence or domicile, or under the law of the father’s residence or domicile, whether in the United States or elsewhere[.]” 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). A child born in wedlock is considered to be a legitimate child. *See Matter of Kubicka*, 14 I&N Dec. 303, 304 (BIA 1972).

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 initially established that he satisfied some of the conditions for issuance of a Certificate of Citizenship under section 322 of the Act. A U.S. birth certificate and a U.S. passport show the Applicant’s mother is a U.S. citizen who was born in Kansas in [] 1983. Birth and marriage certificates show the biological parent-child relationship between the Applicant and his mother (and father), that the Applicant was born abroad, and demonstrate that the Applicant is under 18 years of age and is unmarried. The Applicant therefore qualifies as his mother’s “child” under section 101(c) of the Act, and he has satisfied sections 322(a)(1) and (3) of the Act requirements.

Other evidence, including the Applicant’s birth certificate and his parents’ Kansas marriage certificate, show that his parents are married. The Form N-600K lists the Applicant’s residential address and reflects that his mother and father claim to have the same residential address.

The issue on appeal is whether the Applicant has demonstrated, by a preponderance of the evidence, that his mother was 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)(A) of the Act.

A. Evidence Regarding Physical Presence Conditions

On the Form N-600K, the Applicant listed dates for which he claimed that his mother was physically present in the United States, with an initial period of claimed physical presence of nearly 20 years beginning with his mother’s birth in 1983 and ending in July 2002. The Applicant claimed that his mother continuously resided in the United States from birth until [] 2004, when she married the Applicant’s father and moved to Canada.

As initial evidence of his mother’s U.S. physical presence, the Applicant provided a monthly bank statement issued to the mother at an address in [] Kansas in October 2001.¹ He also included a dual marriage license and marriage certificate issued to his parents in [] 2004, showing that the mother was residing in [] Kansas at the time of application for the marriage license and the marriage. The Director issued a notice of continuance and request for additional evidence (RFE) of the mother’s physical presence in the United States. Noting that the following documents were not specifically required, the Director suggested that evidence of the mother’s physical presence might include: school records, military records, school transcripts including attendance records; Internal Revenue Service (IRS) tax return transcripts or federal tax returns; deeds, mortgages, or leases showing residence; affidavits from churches, unions, or other organizations; U.S. social security quarterly reports; and affidavits from third parties with knowledge of the mother’s residence and physical presence.

¹ All of the mother’s claimed residence in Kansas is for the same residential address in the town []

In response, the Applicant submitted two monthly bank statements issued to his mother at the address in [] Kansas, one from June 1998 and the other from July 1999. The Applicant also submitted his mother's U.S. tax returns for 2000, 2001, and 2002, showing that his mother had claimed to reside in [] Kansas in each year and listed her adjusted gross income of \$4,443, \$5,744, and \$13,223, respectively. Accompanying IRS Forms W-2, Wage and Tax Statements (Forms W-2) show that the Applicant's mother was paid \$2,700 by a school in 2001, and \$7,223 by a restaurant in 2002. However, the Director denied the Form N-600K, concluding that the documentation was only sufficient to show that the Applicant's mother had been paid for work in the United States during some portion of a given tax year, and that the evidence did not show sufficient physical presence to meet the minimum U.S. physical presence conditions at section 322(a)(2)(A) of the Act.

On appeal, the Applicant provides new evidence of his mother's physical presence in the United States prior to the age of 14 years, including a 1990 diploma showing that the mother completed kindergarten in Kansas, and school progress reports showing that she also attended school in Kansas from first grade through eighth grade from 1990 to 1998. The Applicant also submits his mother's Canadian visitor documents showing that the mother first arrived in Canada in 2004.

The Applicant contends on appeal that his mother's work history is sufficient evidence to satisfy the section 322(a)(3) of the Act condition that requires the U.S. citizen parent to have had two years of physical presence after turning the age of fourteen. The Applicant includes the following documents on appeal: (1) two 2000 IRS Forms W-2, one showing that the Applicant's grandfather in Kansas paid the mother approximately \$1,873 in wages, and the other showing that a school in Kansas paid the mother \$2,570; (2) a 2001 IRS Form W-2 showing that a Kansas restaurant paid the mother approximately \$1,911; (3) a 2002 IRS Form W-2 showing that a school in Kansas paid the mother approximately \$6,000; (4) a 2003 IRS Form 1040 showing the mother indicated she resided in Kansas and claimed adjusted gross income of \$9,613; (5) two 2003 IRS Forms W-2 showing that his mother was paid \$5,500 by a school in Kansas, and \$4,070 by a school in Oregon; and (6) a social security transcript issued in April 2021 showing that his mother reported actual income of \$2,570 in 2000, \$5,736 in 2001, \$13,223 in 2002, \$9,570 in 2003, and \$5,916 in 2004. The Applicant also provides a signed employment contract from a school in Oregon, in which the school agreed to pay the Applicant's mother a salary of \$9,500 to teach for ten months in the 2003 to 2004 school year.

Finally, on appeal the Applicant claims for the first time that, in addition to satisfying the section 322(a)(3) of the Act U.S. physical presence conditions through his mother, he also satisfies the physical presence conditions through his maternal grandparents. The Applicant includes passports showing that his maternal grandparents are U.S. citizens by birth, a 2003 real estate mortgage signed by his grandparents, his grandparents' 2008 IRS Form 1040, and a 2014 article from a Kansas hospital discussing the fact that the Applicant's grandfather has been a volunteer worker at the hospital one to three days per week for a six-year period.

B. Mother's Physical Presence in the United States

The mother's school progress reports provided on appeal specify how many days she attended school in Kansas, and reflect that she was physically present approximately 162 or 163 days each year. Based on the years of school attendance and documented physical presence in school, the school records alone are sufficient to demonstrate that the Applicant's mother was physically present in the United

States for a minimum of at least five years prior to turning fourteen in [] 1997. Although the mother's eighth grade progress report for the school year ending in May 1998 shows that she also was physically present for 81 days after turning 14 years of age in [] 1997, a separate condition at section 322(a)(3) of the Act, the reports do not establish that the mother was present any additional days. Therefore, the school records are not sufficient to show that the mother had a minimum of two years of physical presence in the United States after turning fourteen.

The bank statements that the Applicant provided below and on appeal relate to only one month in each year of 1998, 1999, and 2001. Moreover, although they were issued to the Applicant's mother at an address in the United States, they do not show that she was physically present at the address for any specific period of time.

With respect to the work history of the Applicant's mother, the IRS tax returns, IRS Forms W-2, and the social security transcript show that the mother was paid for work in Kansas each year from 2000 to 2004. However, as these documents do not contain specific information about how many days the mother worked for each employer, including whether the employment was continuous, full-time, or seasonal, this evidence does not establish that she had any specific period of actual physical presence in the United States between 2000 and 2004. In addition, although the mother's employment contract shows that she agreed to work as a teacher for a school in Oregon for ten months in the 2003 and 2004 school year, the related 2003 IRS Form W-2 shows that the school paid her \$4,070 for work in 2003 but does not include evidence of payment for work in the United States in 2004. Regardless, the employment contract and related 2003 IRS Form W-2 do not show how many days the Applicant's mother was actually physically present in the United States for her work in Oregon and therefore do not establish any specific amount of physical presence in the United States.

Finally, although the evidence relating to the mother's entry into Canada and Canadian permanent residence show her status in Canada, the documents do not show that she was actually physically present in the United States for specific periods of time when she was not in Canada.

A review of the record, including the documents provided on appeal, shows that the Applicant's mother was physically present in the United States for at least five years; however, the record is not sufficient to show that at least two years of her physical presence in the United States were after the age of fourteen. Consequently, the Applicant does not satisfy the section 322(a)(2)(A) of the Act U.S. physical presence conditions through his mother.

C. A Grandparent's Physical Presence in the United States

The U.S. passports, 2003 mortgage document, and 2008 IRS tax return that the Applicant submits on appeal show that his maternal grandparents are U.S. citizens by birth, that they were present in Kansas on the day that they signed their mortgage in 2003, and that they paid taxes in 2008 and claimed to reside in Kansas that year. Moreover, the 2014 article from the Kansas hospital reports that the Applicant's maternal grandfather had volunteered at the hospital for six years, and stated that he resided in Kansas. However, these documents do not contain specific information about how much actual physical presence either maternal grandparent had accumulated in the United States, and whether one of the U.S. citizen grandparents was physically present for a total amount of at least five years, no less than two of which were after the age of fourteen. Consequently, the Applicant also does

not satisfy the section 322(a)(2)(B) of the Act U.S. physical presence conditions through either of his mother's U.S. citizen parents.

D. Residing in the Physical and Legal Custody of the U.S. Citizen Parent

Section 322(a)(4) of the Act requires the child to be residing in the legal and physical custody of the U.S. citizen parent. Regulations at 8 C.F.R. § 322.1(1)(i) provide that a U.S. citizen parent will be presumed to have legal custody of a child in the case of a biological child born to married parents if the child "resides with both natural parents (who are married to each other, living in marital union, and not separated.)" *Id.* Although the Applicant's Form N-600K reflects that the Applicant and his parents claim to share the same physical address, the record before us lacks supporting evidence. Consequently, in any further proceeding, the Applicant must show that he also meets the physical and legal custody conditions at section 322(a)(4) of the Act.

III. CONCLUSION

The Applicant has not sufficiently established that his U.S. citizen mother or one of his mother's U.S. citizen parents were physically present in the United States for at least five years, no less than two years of which occurred after the mother turned fourteen. He therefore does not meet section 322(a)(2) of the Act conditions. Moreover, the record lacks evidence that the Applicant resides abroad in his U.S. citizen mother's legal and physical custody, as required under section 322(a)(4) of the Act. Consequently, the Applicant has not met his burden of proof to establish that he acquired U.S. citizenship from his mother under section 322 of the Act, and his Form N-600K remains denied.

ORDER: The appeal is dismissed.