



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

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

In Re: 24369840

Date: FEB. 22, 2023

Appeal of Los Angeles, California Field Office Decision

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

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

The Director of the Los Angeles, California Field Office denied the application, concluding that the record did not establish as required that the Applicant is residing outside of the United States with his father. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Applicant's father bears the burden of proof in these proceedings 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 information on the Form N-600K reflects that the Applicant was born abroad in 2010 to unmarried noncitizen parents.<sup>1</sup> His father naturalized as a U.S. citizen in 2018, and the parents married in 2019 when the Applicant was eight years old. Section 322 of the Act, as in effect since 2001 provides 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 [of the Act], [8 U.S.C. § 1432].<sup>2</sup> The [Secretary of Homeland Security] 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.

---

<sup>1</sup> We note that the record before us does not include the Applicant's foreign birth certificate.

<sup>2</sup> That section provides for derivative citizenship of foreign-born children who are under 18 years of age and residing in the United States as lawful permanent residents in the legal and physical custody of their U.S. citizen parent or parents.

(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. . . .

(Emphasis added).

Legal custody refers to the responsibility for and authority over a child. 8 C.F.R. § 322.1. Absent evidence to the contrary, U.S. Citizenship and Immigration Services (USCIS) will presume that a U.S. citizen parent has legal custody of a child, and will recognize that U.S. citizen as having lawful authority over the child, 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). 8 C.F.R. § 322.1(1)(i).

Because the Applicant was born abroad, he is presumed to be a noncitizen and his father bears the burden of establishing eligibility for a Certificate of Citizenship on the Applicant's behalf 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's father has established that the Applicant is currently residing outside of the United States in his legal and physical custody, as required under section 322(a)(4) of the Act.

The Applicant's father represented on the instant Form N-600K that the Applicant and his mother are currently residing in Mexico, while he is residing in California. In support, he submitted copies of his 2016-2020 federal income tax returns, all of which list his California address. The Director determined that because this evidence pointed to the father's residence in the United States the Applicant did not meet the condition of residing outside of the United States in his U.S. citizen parent's legal and physical custody. The Director also noted inconsistent information concerning the Applicant's and her mother's residence—although the father listed a Mexican address for the Applicant and his mother on the Form N-600K, on his 2020 U.S. tax return he indicated that they lived with him in California.

On appeal, the father asserts that contrary to the Director's determination the Applicant has always been in his physical and legal custody. He explains that he listed the California address for his spouse on the 2020 tax return, because the form did not provide for listing a separate foreign address. He

confirms that his spouse is a resident of Mexico, although she occasionally travels to the United States with her nonimmigrant visitor visa. He further states that the Applicant also resides in Mexico where he currently attends school. In support, the father submits additional documentation including two utility bills listing his California address and the Applicant's 2021-2022 Mexican school record.

Upon review, we conclude that the evidence, including the additional documents submitted on appeal remains insufficient to demonstrate that the Applicant meets the requirement of residing outside of the United States in his father's legal and physical custody. Although not defined in the statute and regulations, the term "physical custody" has been interpreted in the context of derivative citizenship proceedings to mean actual residence with the parent. *See Matter of M-*, 3 I&N Dec. 850, 856 (BIA 1950). The term "residence," in turn means "the place of general abode," a person's "principal, actual dwelling place in fact, without regard to intent." Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33). Here, the father's statements as well as the tax returns and utility bills indicate that his "principal, actual dwelling place in fact" is currently in California, while the Applicant and his mother are currently residing in Mexico. Consequently, as the father has not demonstrated that the Applicant is actually residing with him outside of the United States the *physical custody* requirement in section 322(a)(4) of the Act has not been met.

Similarly, the Applicant's father has not shown he meets the *legal custody* presumption in 8 C.F.R. § 322.1(1)(i) which, as stated provides that the U.S. citizen parent's lawful authority over the child will be presumed in the case of a biological child who *currently resides with both natural parents* who are married to each other and living in marital union. Although the Applicant's parents are married to each other, the record does not establish that they currently live together in marital union and that the Applicant is residing with *both* his parents; rather, the Applicant's father is residing in the United States, and the Applicant and his mother are residing in Mexico. Lastly and more importantly, section 322(a)(4) of the Act specifically requires the child to be residing in their U.S. citizen parent's legal custody *outside of the United States*. Because the Applicant's father currently resides *in the United States*, he does not satisfy this condition regardless of whether he maintains lawful authority over the Applicant.

Based on the above, we conclude that the Applicant's father has not met his burden of proof to show that the Applicant is currently residing outside of the United States in his legal and physical custody, as required in section 322(a)(4) of the Act. Because the Applicant is ineligible for issuance of a Certificate of Citizenship on that basis alone, we need not address at this time whether he meets the remaining requirements in section 322 of the Act, including his father's five-year physical presence in the United States, and his own temporary presence in the United States pursuant to a lawful admission and maintenance of lawful status

**ORDER:** The appeal is dismissed.