



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

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

In Re: 23478374

Date: JAN. 18, 2022

Appeal of Houston, Texas 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 behalf of the Applicant to reflect that the Applicant derived U.S. citizenship through his naturalized U.S. parent under section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The Director of the Houston, Texas Field Office initially denied the Form N-600K for abandonment. The Director subsequently reopened the matter on motion and again denied the Form N-600K, concluding that the Applicant had not shown that: (1) his father had been physically present in the United States for at least 5 years, no less than 2 of which were after the age of 14 years; and (2) he had satisfied the residing abroad in the legal and physical custody of a U.S. citizen parent conditions at section 322(a)(4) of the Act. The matter is now before us on appeal. 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 Nigeria in  2011 to married, naturalized U.S. citizen parents. The Applicant indicated on the Form N-600K that he currently resides in Nigeria. He initially claimed U.S. citizenship under section 322 of the Act through his naturalized U.S. citizen father. On appeal, the Applicant indicates that he also is eligible for a Certificate of Citizenship through his U.S. citizen 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 [of the Act], [8 U.S.C. § 1432]. The [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;

. . . .

(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.

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, he is presumed to be a noncitizen 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). Moreover, an applicant must establish eligibility at the time of filing and must continue to be eligible through adjudication. 8 C.F.R. § 103.2(b)(1).

## II. ANALYSIS

The Applicant initially established that he meets some of the requirements for issuance of a Certificate of Citizenship under section 322 of the Act. Copies of U.S. passports and other USCIS records show that the Applicant's father became a naturalized U.S. citizen in 1999 and his mother became a naturalized U.S. citizen in February 2011, before the Applicant's [ ] 2011 birth. Birth and marriage certificates<sup>1</sup> show the parent-child relationship between the Applicant and his father (and mother), that the Applicant was born abroad, and demonstrate that the Applicant is under 18 years of age and unmarried. The Applicant therefore meets the definition of a "child" under section 101(c) of the Act, and he has satisfied section 322(a)(1) and (a)(3) of the Act conditions. The sole issues before us are whether the Applicant has shown that he satisfied the section 322(a)(2)(A) of the Act physical presence conditions through his U.S. citizen father, and whether he satisfied the residing abroad in the physical custody of his U.S. citizen father conditions at section 322(a)(4) of the Act.<sup>2</sup>

### A. Father's U.S. Physical Presence

The Applicant claimed on the Form N-600K that his father had been physically present in the United States since September 2017 to the "present" May 2021 filing date of the Form N-600K, listed his father's U.S. residential address in [ ] Texas, and provided an April 2021 letter from the father's U.S. employer stating that the father had worked for the company as a nurse since June 2017. The Director denied the Form N-600K, concluding that the record was not sufficient to establish that the Applicant's U.S. citizen father was physically present in the United States for not less than 5 years, at least 2 of which were after turning 14 years of age, as required by section 322(a)(2)(A) of the Act.

On appeal, the Applicant does not include additional evidence regarding his father's U.S. physical presence, claiming that the evidence of record before the Director was sufficient to demonstrate that his father has the requisite 5 years of physical presence in the United States, no less than 2 of which were after the age of 14 years. However, both his father's employment letter and Applicant's claims on the Form N-600K indicate that the father was physically present in the United States from June 2017 to the May 2021 filing date of the petition, which is period of less than four years of physical presence. Consequently, the Applicant has not shown that when he filed the Form N-600K, his father had the minimum 5 years of physical presence in the United States, no less than 2 of which were after the father turned 14 years of age, in accordance with the relevant section 322(a)(2)(A) of the Act conditions.

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<sup>1</sup> Although the Applicant asserted on his Form N-600 that his parents married in [ ] 1981, the marriage certificate that he included shows that they married in [ ] 1982.

<sup>2</sup> As will be discussed, our findings that the Applicant has not shown that he satisfies: (1) the physical presence conditions at section 322(a)(2) of the Act through his father; and (2) the residing in the physical custody conditions at section 322(a)(4) of the Act through his father or his mother, are dispositive of this appeal. Therefore, we decline to reach and hereby reserve the Applicant's appellate arguments that he separately satisfied the residing in the *legal* custody of a U.S. citizen parent conditions at section 322(a)(4) of the Act through his mother or father, and the physical presence conditions at section 322(a)(2) of the Act through his U.S. citizen mother. 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).

## B. Residing Abroad in the Physical Custody of the U.S. Citizen Parent

While 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). Section 101(a)(33) of the Act defines the term “residence” as “the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent.”

On the Form N-600K, filed in May 2021, the Applicant stated that he was residing in Nigeria and listed a physical address in [redacted] Nigeria. As initial supporting evidence, the Applicant provided a school transcript showing he attended school in Nigeria for 82 out of 102 days that the school was open for the term that began in September 2018. With respect to his parents, the Applicant listed their shared residential address in [redacted] Texas on the Form N-600K and specified that his father had been physically present in the United States from September 2017 to “the present” filing date in May 2021. He also included an April 2021 letter from his father’s U.S. employer stating that the father had worked for the company as a nurse since June 2017, and a letter from his mother’s U.S. employer stating that the mother had worked for the company since 2003. The Director denied the Form N-600K, concluding that the record indicated that the Applicant’s U.S. citizen father was residing in the United States at the time the Form N-600K was filed and therefore did not show that the Applicant was residing outside the United States in the physical custody of a U.S. citizen parent prior to turning 18 years of age, as required.<sup>3</sup>

On appeal, the Applicant claims that he is residing outside the United States in the legal and physical custody of both of his U.S. citizen parents. He states in a brief that both of his parents are residents of Nigeria in addition to the United States and maintain permanent homes in both countries. The Applicant contends that he resides in the family home in Nigeria, and that his parents frequently travel from their home in Texas to their home in Nigeria. Based on this claimed arrangement, the Applicant contends that he resides abroad in the physical custody of both of his parents in the home in Nigeria, and that “no one objects to this.” The supporting evidence on appeal includes a travel agency printout and airline tickets reflecting that his mother travelled to Nigeria in 2022. He includes a photograph of his mother with the Applicant and his siblings, and claims that it was taken during her 2022 visit to the family home in Nigeria. The Applicant also provides a partial copy of a customer history electric billing statement under the father’s name for a property in [redacted] Nigeria from at least 2019 to April 2022, a more detailed electricity statement for the February 2022 billing period, and an updated employment letter for his mother from her Texas employer who now asserts that the Applicant’s mother has not been *continuously* employed since 2003, but rather is sporadically employed.

The above documents reflect that the Applicant’s father has been billed for utility charges on a property in Nigerian since 2019, and that the mother travelled to Nigeria in 2022 and had her photograph taken with the Applicant during that visit. However, the evidence does not show that the property for which

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<sup>3</sup> Although not specifically addressed by the Director, the record also does not show that the Applicant is residing abroad as required under section 322(a)(4) of the Act, but we reserve this issue as he has not otherwise established eligibility.

the father was billed was a residence and that the father was residing at the address in Nigeria. Here, the Applicant represented on the Form N-600K that his father and mother are residing in Texas and provided evidence that the father has been employed in [ ] since at least 2017 and the mother since at least 2003, whereas the Applicant asserted on the Form N-600K that he is residing in Nigeria and submitted a 2018 Nigerian school record in support of this representation. We acknowledge the Applicant's claim on appeal that his parents maintain residences both in the United States and Nigeria, as well as the submission of a utility statement addressed to the father at a Nigerian address and a family photograph taken in 2022; however, these documents are insufficient to establish that the father or mother's "principal, actual dwelling place" is in Nigeria in view of the other provided evidence, including the employment letters, pointing to the parents' continued residence and employment in Texas. Consequently, the Applicant has not shown by a preponderance of the evidence that his father or mother's principal actual dwelling place was outside of the United States when he filed the Form N-600K in May 2021 and thereafter, and therefore has not shown that the Applicant is residing outside of the United States in the physical custody of a U.S. citizen parent for purposes of section 322(a)(4) of the Act.

### III. CONCLUSION

The Applicant has not shown that his U.S. citizen father has the requisite 5 years of physical presence in the United States, no less than 2 of which were after turning 14 years of age, as required under section 322(a)(2) of the Act conditions. Moreover, the Applicant has not shown that he is residing outside of the United States in a U.S. citizen parent's physical custody, as required under section 322(a)(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.