



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

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

In Re: 27229082

Date: JUNE 16, 2023

Appeal of Raleigh, North Carolina 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 she derived U.S. citizenship through her father under section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The Director of the Raleigh, North Carolina Field Office denied the application, concluding that the Applicant had not shown that she was residing outside of the United States in the legal and physical custody of her U.S. citizen parent. 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 Mexico in [REDACTED] 2005, to two foreign national parents. Her father became a naturalized U.S. citizen in March 2022. The Applicant indicated on the Form N-600K that she currently resides in Mexico and claims U.S. citizenship under section 322 of the Act solely through her father.¹

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

¹ An August 2020 death certificate shows that the Applicant's mother is deceased. The Applicant does not claim, and the record does not show, that her mother was a U.S. citizen.

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.

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*, 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. 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 she meets some of the requirements for issuance of a Certificate of Citizenship under section 322 of the Act. A copy of a 1961 Mexican birth registration and a 2022 U.S. Certificate of Naturalization show that the Applicant’s father is a naturalized U.S. citizen. Birth certificates show the parent-child relationship between the Applicant and her father (and mother), that the Applicant was born abroad, and demonstrate that she was under 18 years of age when her father naturalized. The Applicant claims that she is unmarried, and the record does not contradict her assertion. The Applicant therefore qualifies as her father’s “child” under section 101(c) of the Act,

and she has satisfied sections 322(a)(1) and (a)(3) of the Act conditions. The issue before us is whether or not the Applicant showed that she is residing abroad in the *physical* custody of her U.S. citizen father in order to satisfy the relevant conditions at section 322(a)(4) of the Act.²

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 August 2022, the Applicant stated that her physical residence is in Mexico and listed a residential address in North Carolina for her U.S. citizen father. The Director denied the Form N-600K, concluding that because the Applicant’s father resides in the United States and the Applicant resides in Mexico, the record was not sufficient to show that the Applicant was residing outside the United States in the legal and physical custody of her U.S. citizen father, as required to satisfy section 322(a)(4) of the Act conditions.

On appeal, the Applicant’s father claims that the Applicant is residing abroad in his physical custody even though he lives in the United States and submits additional evidence in support of his appeal. According to the father, he had five children with the Applicant’s mother and has always been the sole breadwinner for her and their children. Although he resides in North Carolina whereas the Applicant and her siblings have continuously resided in his family home in Mexico, the father claims that this arrangement is solely for employment purposes and that he returns to Mexico as much as possible to be with his family. The father stated that since his wife died in 2020, the Applicant has continued to reside in Mexico with one of her siblings while the father continues to work in North Carolina. Nevertheless, the father asserts that the Applicant is solely in his custody as the surviving parent and therefore resides in his legal and physical custody abroad. The father includes evidence that, he asserts, shows that his daughter is in his physical custody, including her birth certificate, baptism certificate, certificate of confirmation and first communion, and her school records. He also includes Mexican birth certificates for the Applicant’s siblings, a U.S. wire transfer transcript for the period of January 2015 to September 2022, and evidence that he pays the water bills for his residence in Mexico. The father also submits his U.S. Internal Revenue Service tax returns (U.S. tax returns) for 2011 and 2021, and a partial supporting statement for his 2013 U.S. tax return to show that he specifically claimed the Applicant as his dependent in each of those years.

The statement that the Applicant’s father submits on appeal confirms that he has been and is residing in the United States whereas the Applicant has been and is residing in Mexico, and the additional evidence he includes supports this conclusion. For example, the Applicant’s school records show that

² As will be discussed, our conclusion that the Applicant has not shown that she is residing abroad in the *physical* custody of her U.S. citizen parent for purposes of section 322(a)(4) of the Act is dispositive of the appeal. As a consequence, we decline to reach and hereby reserve a decision on whether or not the Applicant: (1) is also residing in her father’s *legal* custody under section 322(a)(4) of the Act; and (2) has satisfied the parental physical presence requirements at section 322(a)(2)(A) of the Act through her U.S. citizen father. *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).

she has been attending school in Mexico, and the father's U.S. tax records show that he is residing and working in North Carolina since approximately 2011. Other documents such as the Applicant's 2005 Mexican birth certificate, her baptism and first communion certificates, and her siblings' birth certificates establish their parent-child relationship as well as the Applicant's biological relationship with her siblings. However, the certificates do not include residential information for the father and given that he confirms that he works and lives in North Carolina, the documents do not show that he was residing in Mexico with the Applicant when she filed the Form N-600K. Moreover, the wire transfers show that the father sent money from North Carolina to his family in Mexico, and therefore do not show that he was living with the Applicant in Mexico. We acknowledge that the Applicant's father claims he maintains residences both in the United States and Mexico, and that he visits the family in Mexico as much as his work allows. We also acknowledge that the water bill shows that he appears to be responsible for services to the home in Mexico. However, the statements and documents are insufficient to establish that the father's "principal, actual dwelling place" is in Mexico in view of the other provided evidence, including his own statements and wire transfer and U.S. tax records, pointing to his continued residence and employment in North Carolina. Consequently, the Applicant has not shown by a preponderance of the evidence that her father's principal, actual dwelling place was outside of the United States when she filed the Form N-600K in August 2022 and thereafter such that she is residing outside of the United States in the physical custody of her U.S. citizen parent for purposes of section 322(a)(4) of the Act.

III. CONCLUSION

The Applicant has not shown that she resides outside of the United States in her U.S. citizen father's *physical* custody, as required under section 322(a)(4) of the Act. As such, the Applicant has not shown she is eligible for a Certificate of Citizenship under section 322 of the Act.

ORDER: The appeal is dismissed.