



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

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

In Re: 25295792

Date: APR. 26, 2023

Appeal of Buffalo, New York Field Office Decision

Form N-600K, Application for Citizenship and Issuance of Certificate 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 Buffalo, New York Field Office denied the application, concluding that the record did not establish that the Applicant satisfied the conditions for deriving U.S. citizenship at section 322 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 Jamaica in [redacted] 2005, to parents who were citizens of Jamaica and subsequently married each other in [redacted] 2015. The Applicant indicated on the Form N-600K that he currently resides in the United States with his parents. Although the record shows that the Applicant's father became a naturalized U.S. citizen in September 2016 and his mother in February 2022, after the Form N-600K was filed, the Applicant claims U.S. citizenship under section 322 of the Act solely through his father.

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.

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 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). 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 Director denied the Form N-600K, concluding that the Applicant had not shown that he satisfied the conditions for deriving U.S. citizenship at section 322 of the Act. The Director did not make a determination as to whether or not the record was sufficient to find that the Applicant's U.S. citizen father 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.¹ Instead, although not clearly articulated, the Director denied the application because the Applicant was residing in the United States pursuant to a lawful admission for permanent residence and therefore did not show that he is *residing abroad* in the legal and physical custody of his U.S. citizen father in order to satisfy the conditions at section 322(a)(4) of the Act. The Director indicated that the Applicant instead appeared to satisfy the conditions for deriving U.S. citizenship under section 320 of the Act

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 2021, the Applicant stated that he was residing with his father in the United States at a [REDACTED] New York residential address. Accordingly, as stated, the record indicates that the Applicant "is not residing outside of the United States," as required by section 322(a)(4) of the Act.

On appeal, the Applicant's father states that he mistakenly filed the Form N-600K instead of a Form N-600, Application for Certificate of Citizenship, which must be filed when an applicant resides within the United States and claims derivative citizenship under section 320 of the Act.² He does not dispute the Director's decision to deny the Form N-600K, instead asking only that the application be considered under section 320 of the Act. However, the Form N-600K is solely for citizenship claims made under section 322 of the Act. Here, the Applicant is not asserting and has not otherwise established that he derived citizenship under section 322 on appeal. As stated, the record indicates that the Applicant was residing in the United States pursuant to a lawful admission for permanent residence at the time he filed his Form N-600K, and on appeal, he still lists a current residential address in [REDACTED], New York on his Form I-290B. As a consequence, the Applicant has not shown by a preponderance of the evidence that his principal actual dwelling place was outside of the United States when he filed the Form N-600K in August 2021 and thereafter such that he is residing *outside of the United States* in the legal and physical custody of a U.S. citizen parent, 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.

¹ We reserve this issue. Our reservation of the issue is not a stipulation that the Applicant has overcome this additional possibility for denial, and should not be construed as such. Rather, there is no constructive purpose to addressing the additional ground here, because as shown below, it would not change the outcome of the appeal.

² The denial of the Applicant's Form N-600K does not preclude filing of a Form N-600, Application for Certificate of Citizenship. USCIS records show that the Applicant has a pending Form N-600 as of the date of this decision.