



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

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

In Re: 28233137

Date: OCT. 4, 2023

Appeal of New York City, New York Field Office Decision

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

The Applicant's father, a naturalized U.S. citizen, seeks a Certificate of Citizenship on behalf of the Applicant under section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433. A U.S. citizen parent may apply for a Certificate of Citizenship on behalf of a child residing outside the United States if the child is residing in the U.S. citizen parent's custody, and the parent had been physically present in the United States for five years, two of which were after the parent's 14th birthday.

The Director of the New York City, New York Field Office denied the Form N-600K, concluding that the Applicant was ineligible for a Certificate of Citizenship because she was not residing outside of the United States in the legal and physical custody of her U.S. citizen father, as required. On appeal, the Applicant's father submits additional evidence and explains that the Applicant has since entered the United States and is currently residing with him in Florida.

The Applicant's father 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.

Section 322 of the Act, as in effect since February 2001, applies to children of U.S. citizens born and residing outside of the United States.¹ It 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].² The [Secretary of

¹ See also Form N-600K, Instructions for Application for Citizenship and Issuance of Certificate Under Section 322, at 1, <https://www.uscis.gov/n-600k> (stating that the form may be filed by a U.S. citizen parent who regularly resides outside the United States, has legal and physical custody of the child, and is seeking naturalization of the child).

² Section 320 of the Act 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.

Homeland Security] shall issue a certificate of citizenship to such applicant upon proof . . . 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. . . .

(Emphasis added).

The term “child,” as used in section 322 of the Act includes, in relevant part, a child who was born to unmarried parents and “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.” 8 C.F.R. § 322.1; section 101(c)(1) of the Act, 8 U.S.C. § 1182(c)(1).

The record reflects that the Applicant was born abroad in 2016 to unmarried parents – a U.S. citizen father and a noncitizen mother. Her father was born in Haiti in 1973, but naturalized as a U.S. citizen in 2003. In 2019 the Applicant’s father filed the instant Form N-600K indicating that the Applicant resided in Chile, while he resided in New York. In support of the Form N-600K and in response to the Director’s subsequent request for evidence, the Applicant’s father submitted documentation of his employment in the United States since 2001, a notarized statement in which he promised to financially support the Applicant until her 18th birthday, certificates of his 1995 and 2004 marriages to women neither of whom is the Applicant’s mother, birth certificates, DNA tests results, and a Spanish-language document pointing to the Applicant’s residence in Chile with her mother and sibling.

As stated, the Director denied the Form N-600K, concluding that because this evidence indicated that the Applicant resided abroad, and her father resided in the United States, the Applicant did not satisfy the requirement in section 322(a)(4) of the Act of residing abroad in the legal and physical custody of her father.

The Applicant's father has not overcome this determination on appeal. Specifically, the father states that the Applicant is now living with him in the United States,³ and submits evidence that the Applicant has been enrolled as a full time student at a school in Florida during the 2020-2021 school year.

As the preponderance of the evidence in the record indicates that both the Applicant and her father are currently residing in the United States, the Applicant does not meet the condition of "residing outside of the United States" in section 322(a)(4) of the Act. Because she is ineligible for a Certificate of Citizenship under section 322 of the Act for this reason alone, we need not address at this time if she meets the remaining conditions in section 322 of the Act, including whether she qualifies as her father's "child" for the purposes of that section, as well as her father's five-year physical presence in the United States, and her own temporary presence in the United States pursuant to a lawful admission and maintenance of lawful status. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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).

In conclusion, the Applicant's father has not demonstrated, as required, that the Applicant is residing outside of the United States in his legal and physical custody. Consequently, the Applicant is ineligible for issuance of a Certificate of Citizenship under section 322 of the Act, and the Form N-600K remains denied.

ORDER: The appeal is dismissed.⁴

³ U.S. Citizenship and Immigration Services (USCIS) records reflect that that in July 2023 the Applicant was granted Temporary Protected Status in the United States as a national of Haiti.

⁴ The dismissal does not preclude the Applicant from making a U.S. citizenship claim pursuant to other citizenship provisions of the Act through filing a Form N-600, Application for Certificate of Citizenship. *See* Form N-600, Instructions for Application for Certificate of Citizenship, at 1, <https://www.uscis.gov/n-600> (providing, in part, that the form may be filed by a child (or a parent or guardian on behalf of a minor child) who is requesting a Certificate of Citizenship because they were born abroad to a U.S. citizen parent, or automatically became a U.S. citizen after birth, but before turning 18 years of age).