



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

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

In Re: 28580964

Date: OCT. 31, 2023

Appeal of New York, New York Field Office Decision

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

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

The Director of the New York, 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 Haiti in  2005 to married parents and is a citizen of Canada.<sup>1</sup> Her father became a naturalized U.S. citizen in March 2008. The record contains a Canadian passport showing that the Applicant's mother is a citizen of Canada, but it does not show that the Applicant's mother is a U.S. citizen; therefore, the Applicant claims U.S. citizenship under section 322 of the Act solely through her 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 under 18 years of age who were born outside of the United States and fulfill certain conditions, such as having at least one U.S. citizen parent; the U.S. citizen parent or a U.S. citizen grandparent was physically present in the United States or its outlying possessions for a total period of not less than five years, at least two of which were after attaining the age of fourteen years; the child is residing outside of the United States in the legal and physical custody of the U.S. citizen parent; and the child is temporarily present in the United States pursuant to a lawful admission and is maintaining such lawful status.

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<sup>1</sup> The Applicant provided a copy of her Certificate of Canadian Citizenship and her Canadian passport; however, these documents do not show when and how she became a Canadian citizen, including whether it was through her Canadian citizen mother or other means.

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-Larios*, 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. at 376.

## II. ANALYSIS

The Director denied the Form N-600K, concluding that the Applicant had not shown that she satisfied the conditions for deriving U.S. citizenship at section 322 of the Act because she was residing in Canada when she filed the N-600K, whereas her U.S. citizen father was residing in Haiti. As a consequence, the Director stated that the Applicant did not show that she is residing abroad in the physical custody of her U.S. citizen parent as section 322(a)(4) of the Act requires.

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.” Neither the Act nor the regulations define the term “physical custody.” However, “physical custody” has been considered in the context of “actual uncontested custody” in derivative citizenship proceedings and interpreted to mean actual residence with the parent. *Bagot v. Ashcroft*, 398 F.3d 252, 267 (3rd Cir. 2005) (father had actual physical custody of the child where the child lived with him and no one contested the father’s custody); *Matter of M-*, 3 I&N Dec. 850, 856 (BIA 1950) (father had “actual uncontested custody” of a child where the father lived with the child, took care of the child, and the mother consented to his custody).

On the Form N-600K, filed in November 2022, the Applicant stated that she was residing outside the United States at an [REDACTED] Canada residential address. Although she claimed on the Form N-600K that her father’s physical address at the time of filing was in Haiti but that he had been physically present in the United States from August 2011 to March 2022, other evidence in the record, including employment letters and U.S. tax returns, indicate that her U.S. citizen father has been residing and working in Haiti since 2003. Additionally, although the Applicant claimed a New York mailing address on the Form N-600K, she indicated her physical address at the time was in Canada and included a February 2022 school transcript showing that she had been attending school in Canada since at least August 2021, and a December 2021 letter of acceptance to attend a four-year course of study at a university in Canada beginning in the Fall of 2022. In response to the Director’s notice seeking additional evidence of her and her father’s residence, the Applicant stated that she had been residing in Canada since September 2022 and her father had been working in Haiti during the same period. The Applicant included evidence that her father has a contract to work as a consultant in Haiti, U.S. tax records listing the father’s residential address in Haiti during 2021 and 2022, and another copy of the Applicant’s December 2021 acceptance letter admitting her to University in Canada. The

Director denied the application, concluding that the Applicant's evidence did not show that she was residing abroad in the physical custody of her U.S. citizen parent, as required.

On appeal, the Applicant states that she is currently living and studying in Canada and that she no longer physically resides with her parents. However, she also contends that she is under the custody of, and economically dependent on, her U.S. citizen father (and her mother). She includes a statement from her U.S. citizen father who asserts that the Applicant has resided in his care and custody since her birth and that she continues to reside with him and her mother in Haiti when she is on break or holiday from her university. The Applicant also submits on appeal her parents' monthly bank statements in 2022 and 2023 for a joint account in Canada to reflect they paid her tuition costs and wire transfers transfer records indicating that her mother deposited various amounts of money to the joint account in 2022 and 2023. She also provided some of her mother's cell phone bills from 2022 and 2023 listing the Applicant as a member of their phone plan, and flight itineraries for the Applicant and her parents visiting each other.

The Applicant claims on appeal that her separation from her U.S. citizen parent during the school year is brief and temporary such that she continues to reside abroad in the physical custody of her U.S. citizen parent in accordance with a U.S. Court of Appeals for the Second Circuit (Second Circuit) decision. *Khalid v. Sessions*, 904 F.3d 129 (2d Cir. 2018). The Second Circuit in *Khalid* found that the plaintiff's brief, temporary separation due to his pre-trial juvenile detention for a period of approximately two months (from July 2011 until his 18th birthday) did not terminate his naturalizing father's physical custody of him such that he established that he was residing in the physical custody of his U.S. citizen father for purposes of deriving citizenship under section 320(a)(4) of the Act. *Id.*

As an initial matter, the record does not show that the Applicant's case arises in the jurisdiction of the Second Circuit such that *Khalid* is binding. Although the Applicant listed a New York mailing address on her Form N-600K, the record does not reflect that she or her father reside in New York in the jurisdiction of the Second Circuit. In fact, her father's statement on appeal confirms that he has been residing in Haiti fulltime since 2003 and continues to reside there. Regardless, the Applicant has not established that she satisfies the physical custody requirement at section 322 of the Act even if that case applied to her application. In contrast to the plaintiff in *Khalid*, the Applicant, who bears the burden of proof in these proceedings, has not shown that she resided in the physical custody of her U.S. citizen parent prior to a brief, temporary physical separation from her citizen father. We acknowledge her and her father's assertion in their statements on appeal that she has always resided in the physical custody of her father since birth. However, the record indicates that the Applicant is a Canadian citizen who was living in Canada at the time her Form N-600K was filed and appears to have been residing there for an unspecified period of time since at least August 2021 and including after the filing of this application, whereas her U.S. citizen father resided and worked in Haiti. The separation has involved some portion of her high school education and a portion of her ongoing four-year bachelor's degree program in Canada. The record before the Director did not include independent, objective evidence reflecting when or where the Applicant last physically resided with her father or for how long, and she has not otherwise demonstrated that her situation is similar to that of the plaintiff in *Khalid*, who undisputedly had been residing in the United States with the naturalizing parent up until his pre-trial juvenile detention. Consequently, the Applicant has not shown that her situation is analogous to that of the *Khalid* plaintiff for purposes of meeting the physical custody condition at section 322(a)(4) of the Act as she asserts.

As stated, the record indicates that when the Applicant filed her Form N-600K in November 2022, she had been residing in Canada since at least 2021 whereas her U.S. citizen father has been residing in Haiti since 2003. Although she submits additional evidence<sup>2</sup> on appeal that her parents provided her with financial support in Canada and that she and her parents visit each other, she and her U.S. citizen father confirm in their updated statements that the Applicant continues to reside in Canada while she pursues a four-year degree, and her father continues to reside and work in Haiti. The new evidence on appeal still does not establish when and where the Applicant last resided in her U.S. citizen parent's physical custody prior to their physical separation. As a consequence, the Applicant has not shown by a preponderance of the evidence that her principal, actual dwelling place was outside of the United States with her U.S. citizen parent when she filed the Form N-600K in November 2022 and thereafter, such that she was residing outside of the United States in the physical custody of a U.S. citizen parent, as required under section 322(a)(4) of the Act. Therefore, the Applicant has not shown she is eligible for a Certificate of Citizenship under section 322 of the Act.<sup>3</sup>

**ORDER:** The appeal is dismissed.

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<sup>2</sup> The bank statements list a Canadian address for the Applicant's parents; however, her father's statement indicates that he is living in Haiti where he claims he has resided fulltime since November 2003.

<sup>3</sup> Additionally, the Applicant is not eligible for derivative citizenship under section 322 of the Act as she is no longer under the age of 18 years of age as required.