



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

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

In Re: 28398927

Date: SEPT. 28, 2023

Appeal of Fort Smith, Arkansas 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 Fort Smith, Arkansas 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 Malaysia in  2011, to married parents who were citizens of Burma. 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 2021 and his mother in January 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 fulfill certain conditions while under the age of 18 years, 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; and the child is residing outside of the United States in the legal and physical custody of the U.S. citizen parent.

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. at 376.

## 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 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 September 2021, the Applicant stated that he was residing with his U.S. citizen father and his mother in the United States at a [REDACTED] Louisiana 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 does not dispute the Director’s decision to deny the Form N-600K, instead noting that the Applicant’s mother had naturalized in January 2022 and providing a copy of her Certificate of Naturalization.

The Form N-600K is solely for citizenship claims made under section 322 of the Act.<sup>1</sup> 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 Louisiana 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 September 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. Therefore, the Applicant has not shown he is eligible for a Certificate of Citizenship under section 322 of the Act.

**ORDER:** The appeal is dismissed.

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<sup>1</sup> The denial of the Applicant’s Form N-600K does not preclude filing of a Form N-600, Application for Certificate of Citizenship, pursuant to section 320 of the Act.