



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

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

In Re: 27573867

Date: AUG.11, 2023

Appeal of Dallas 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 Dallas Field Office in Irving, Texas denied the application, concluding in part that the evidence was insufficient to establish that the Applicant was residing outside of the United States in his father's legal and physical custody, and that the father satisfied the five-year U.S. physical presence requirement. The matter is now before us on appeal.

On appeal, the Applicant's father submits additional evidence and renews his request for issuance of a Certificate of Citizenship to the Applicant.

The Applicant's father bears the burden of proof to demonstrate eligibility for the benefit sought 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 Sierra Leone in 2016 to noncitizen parents who were not married to each other.¹ In 2017, the Applicant's father divorced his first spouse and then married the Applicant's mother in Sierra Leone in 2020, when the Applicant was three years old. Section 322 of the Act applies to children of U.S. citizens born and residing outside of the United States. 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 The Applicant's father was married at the time to a woman who is not the Applicant's mother.

² That section 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).

II. ANALYSIS

The record shows that the Applicant meets two of the above conditions, as he has a U.S. citizen father and is under the age of 18 years. The issues on appeal are whether the Applicant is residing outside of the United States in his father's legal and physical custody, as required in section 322(a)(4) of the Act and, if so, whether he meets the remaining eligibility criteria for issuance of a Certificate of Citizenship.

The Applicant's father indicated on the instant Form N-600K that he resided in Texas, while the Applicant and his mother resided in Sierra Leone. In support, he submitted the Applicant's birth certificate, evidence of his preschool attendance in Sierra Leone, a copy of his passport, and a photograph. The Director determined that this documentation was not adequate to establish that all of the conditions under section 322 of the Act were satisfied, and issued a request for evidence (RFE) asking the Applicant's father to submit copies of marriage and divorce certificates, proof that he met the U.S. physical presence requirements, and documents to show that the Applicant was residing abroad in his legal and physical custody. Because the U.S. Postal Service returned the RFE notice as undeliverable, the Director concluded that the Applicant's father did not meet his burden of proof to establish eligibility for a Certificate of Citizenship and denied the Form N-600K.

On appeal, the Applicant's father submits additional evidence concerning the circumstances of his divorce from his first spouse, and his marriage to the Applicant's mother. He also provides documents

concerning the Applicant's residence in Sierra Leone, and his own residence and employment in Texas.

Upon review of the entire record as supplemented on appeal, we conclude that it remains insufficient to establish that the Applicant meets the requirement of residing in his U.S. citizen father's legal and physical custody outside of the United States. Because the Applicant is ineligible for a Certificate of Citizenship under section 322 of the Act for this reason alone, we will not address whether he meets the remaining eligibility criteria.

A. Physical Custody

Although not defined in the statute and regulations, the term "physical custody" has been interpreted in the context of citizenship proceedings to mean actual residence with the parent. *See Matter of M-*, 3 I&N Dec. 850, 856 (BIA 1950). The term "residence" in turn means "the place of general abode," a person's "principal, actual dwelling place in fact, without regard to intent." Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33). Here, the Applicant's father represented on the Form N-600K that he is currently residing in Texas and that the Applicant is residing in Sierra Leone with his mother. The evidence he submits on appeal is consistent with those representations. Specifically, the father's naturalization, education, and employment records, as well as numerous receipts for the money he transferred to the Applicant's mother in Sierra Leone establish that his "principal, actual dwelling place in fact," is currently in Texas. Conversely, the Applicant's school and health records listing his address in Sierra Leone and the utility bills sent to his mother at that address indicate that the Applicant is residing in Sierra Leone with his mother.

As the father does not claim or submit evidence to show that after filing of the instant Form N-600K he moved to Sierra Leone and currently lives there with the Applicant and his mother,³ we conclude that he has not demonstrated that the Applicant is residing abroad in his *physical custody*.

B. Legal Custody

For the same reason, the father has not established that the Applicant is residing in Sierra Leone in his *legal custody*. Legal custody refers to the responsibility for and authority over a child. 8 C.F.R. § 322.1. For the purposes of section 322 of the Act, USCIS will presume that a U.S. citizen parent has legal custody of a child, and will recognize that U.S. citizen parent as having lawful authority over the child, absent evidence to the contrary, in the case of a biological child who currently resides with both natural parents (who are married to each other, living in marital union, and not separated). 8 C.F.R. § 322.1(1)(i).

Here, although the Applicant's parents have been married to each other since 2020, the evidence does not show that they are currently residing together in marital union and that the Applicant is residing with them, as required to meet the above legal custody presumption. We acknowledge evidence that the father regularly sends money to Sierra Leone to support the Applicant and his mother; nevertheless,

³ We note that the father indicated on the Form N-600K, and U.S. Citizenship and Immigration Services' (USCIS) records confirm, that he filed a Form I-130, Petition for Alien Relative on behalf of the Applicant's mother, so she can immigrate to the United States.

as the preponderance of the evidence indicates that he currently lives in the United States while the Applicant and his mother live in Sierra Leone, the father has not demonstrated that the Applicant is residing outside of the United States in his legal custody.

Based on the above, we conclude that the Applicant's father has not met his burden of proof to show that the Applicant is residing outside of the United States in his legal and physical custody as section 322(a)(4) of the Act mandates. Because the Applicant is ineligible for issuance of a Certificate of Citizenship for this reason alone, we need not determine at this time whether he meets the remaining conditions in section 322 of the Act, including his father's five-year physical presence in the United States, and his 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).

ORDER: The appeal is dismissed.