



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

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

In Re: 23509336

Date: FEB. 7, 2023

Appeal of Houston, Texas Field Office Decision

Form N-600K, Application for a Certificate of Citizenship 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 Houston, Texas Field Office denied the application, concluding that the record did not establish as required that the Applicant is residing in her father's legal and physical custody outside of the United States. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Applicant's father bears the burden of proof in these proceedings 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 Nigeria in 2008 to unmarried noncitizen parents. Her father naturalized as a U.S. citizen in 2020; in June 2021 he filed the instant Form N-600K on the Applicant's behalf, indicating that he was residing in Texas, while the Applicant and her mother resided together in Nigeria. In response to the Director's subsequent request for evidence, the father submitted a marriage certificate which reflects that he and the Applicant's mother were married in Nigeria in 2021, when the Applicant was 13 years old.

Section 322 of the Act provides in relevant 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].¹ The [Secretary of Homeland Security] 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 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.

(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).

Because the Applicant was born abroad, she is presumed to be a noncitizen and her father bears the burden of establishing eligibility for a Certificate of Citizenship on the Applicant's behalf by a preponderance of credible evidence. *See Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008).

II. ANALYSIS

The record shows that the Applicant meets two of the above conditions, as she has a U.S. citizen parent and is currently under 18 years of age. The issue on appeal is whether the Applicant's father has demonstrated that the Applicant is currently residing outside of the United States in his legal and physical custody, as required in section 322(a)(4) of the Act.

The Director determined that the Applicant's father did not show he satisfied this requirement, because the information on the Form N-600K and the 2021 Nigerian marriage certificate indicated that he resided in Texas. On appeal, the father does not deny that he currently lives in Texas. Instead, he states that he has been responsible for paying the Applicant's school fees in Nigeria, and that he is also listed as her second emergency contact in the school documents. In support, the father submits the Applicant's Nigerian 2021-2022 school records.

We acknowledge the father's explanation and submission of this supplemental evidence; however, the record as a whole remains insufficient to establish that he meets the physical and legal custody conditions in section 322(a)(4) of the Act.

A. Physical Custody

Although not defined in the statute and regulations, the term “physical custody” has been interpreted in the context of derivative 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 Nigeria with her mother, and the evidence including the Applicant’s school records and the parents’ marriage certificate is consistent with this representation.

As the father does not claim or submit evidence to show that he subsequently moved to Nigeria and currently lives there with the Applicant, 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 Nigeria 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, U.S. Citizenship and Immigration Services (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 2021, 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 legal custody presumption in 8 C.F.R. § 322.1(1)(i). We recognize that the father supports the Applicant and pays for her education in Nigeria; however, as the preponderance of the evidence indicates that he currently lives in the United States while the Applicant and her mother live in Nigeria, the father has not demonstrated that the Applicant is residing abroad in his legal custody.

III. CONCLUSION

The Applicant’s father has not met his burden of proof to establish that the Applicant is residing outside of the United States in his legal and physical custody. Because the Applicant is ineligible for a Certificate of Citizenship on that basis alone, we need not address at this time whether she satisfies the remaining conditions in section 322 of the Act, including 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.²

² Instead, we reserve those issues. Our reservation of the issues is not a stipulation that those requirements have been met and should not be interpreted as such. Rather, addressing them would serve no constructive purpose, as it would not change the outcome.

ORDER: The appeal is dismissed.