



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

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

In Re: 35525937

Date: Feb. 18, 2025

Appeal of Orlando, Florida Field Office Decision

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

The Applicant's U.S. citizen father filed the instant Form N-600K seeking 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 Orlando, Florida Field Office denied the Form N-600K, concluding that the Applicant did not qualify for a Certificate of Citizenship under section 322 of the Act because she was not residing in her U.S. citizen father's legal and physical custody outside of the United States, as required.

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

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 withdraw the Director's decision and remand the matter to the Director for further proceedings and for the entry of a new decision consistent with our opinion below.

I. LAW

The record reflects that the Applicant was born in Ireland in 2009, to unmarried parents. The Applicant's father was born in the United States (Illinois) and is a U.S. citizen, and her paternal grandfather became a naturalized U.S. citizen in December 1971 and resided in the United States from 1953 to 1973. There is no evidence to indicate that the Applicant's mother is a U.S. citizen, and the Applicant seeks derivative citizenship only through her father and with her paternal grandfather's physical presence.

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, like the Applicant were born and reside 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]¹. . . [and] the [Secretary of 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; or

(B) has . . . a citizen parent who 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. . . .

Regulations at 8 C.F.R. § 322.1 provide 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, as “an unmarried person under twenty-one years of age and includes a child 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[.]”

If the application for Certificate of Citizenship is approved, and after the applicant takes the oath of allegiance (unless the oath is waived), U.S. Citizenship and Immigration Services (USCIS) will issue a Certificate of Citizenship. The child is a citizen as of the date of approval and administration of the oath of allegiance. 8 C.F.R. § 322.5(a).

¹ Section 320 of the Act provides, in pertinent part, that a child born outside of the United States automatically becomes a citizen of the United States if: (1) at least one parent of the child is a citizen of the United States, whether by birth or naturalization; (2) the child is under the age of eighteen years; and (3) the child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

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

There is no dispute that the Applicant is currently under the age of 18 years, her father is a U.S. citizen by birth, and her paternal grandfather was a U.S. citizen who was physically present in the United States for a period or periods totaling not less than five years, at least two of which were after his 14th birthday, as required in sections 322(a)(1), 322(a)(2), and 322(a)(3) of the Act. The issue on appeal is whether the Applicant has demonstrated, by a preponderance of the evidence, that she resides outside of the United States in the legal and physical custody of her U.S. citizen father, as required under section 322(a)(4) of the Act. Upon review of the record, including evidence submitted in response to our NOID, we conclude that she has.

A. Residence Outside of the United States in the Physical Custody of the U.S. Citizen Parent

Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33), 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, federal courts and the Board of Immigration Appeals have considered physical custody in the context of "actual uncontested custody" for derivative citizenship proceedings, and have interpreted it to mean actual residence with the parent. *See Matter of M-*, 3 I&N Dec. 850, 856 (BIA 1950); *Bagot v. Ashcroft*, 398 F.3d 252, 267 (3d Cir. 2005).

On the Form N-600K, the Applicant's father provided the same residential address for himself and the Applicant, listing a physical address on [redacted] Ireland for each of them. He also provided evidence of two pieces of mail delivered to the Applicant at the same address immediately preceding the filing of the Form N-600K. In response to our NOID, the Applicant's father indicates that the Applicant continues to reside with him at [redacted] Ireland and submits several pieces of mail, including mail from the Irish government, medical insurance documents, medical visit documents, bank documents, and a letter from her school specifically listing her home address, all delivered to the Applicant, or her father as her parent,² at the same address throughout the previous year. Upon review, the Applicant's father has submitted sufficient evidence to demonstrate, by a preponderance of the evidence, that the Applicant resides in his physical custody. As such, he has satisfied the residence and physical custody requirements of section 322(a)(4) of the Act.

B. Legal Custody of the U.S. Citizen Parent

The regulations define the term "legal custody" to refer to "the responsibility for and authority over a child." 8 C.F.R. § 322.1. Where the parents are unmarried, USCIS will find a U.S. citizen parent to

² The Applicant's father reiterates that the Applicant is currently 15 years old and, as she is a minor, some documentation is addressed to him as her parent and guardian.

have legal custody of a child . . . “in the case of a biological child born out of wedlock who has been legitimated and currently resides with the natural parent.” 8 C.F.R. § 322.1(1)(iii). USCIS also “will consider a U.S. citizen parent who has been awarded ‘joint custody’ to have legal custody of a child, and there may be other factual circumstances under which we will consider a U.S. citizen parent to have legal custody over an applicant. 8 C.F.R. § 322.1(2).

In this case, the Applicant’s birth certificate shows the biological relationship between the Applicant and her U.S. citizen father.³ The record also shows that the Applicant resides with her father in Ireland. The Applicant’s father provided a 2013 *Order Appointing a Father to Be a Guardian* pursuant to section 6A of the Guardianship of Infants Act, 1964, from a District Court in [redacted] Ireland (court order). The court order indicates that the Applicant’s father is appointed “as joint guardian of the [Applicant] together with [the] mother.” In denying the Form N-600K, the Director concluded that although the Applicant’s father provided evidence of his responsibility to make decisions and perform duties regarding the Applicant’s upbringing, he did not submit evidence of legal custody granting him the day-to-day care and home life of the Applicant.

On appeal, the Applicant’s father asserts that the 2013 court order establishes him as the legal guardian and custodian of the Applicant. He includes an affidavit from S-J-⁴ a Peace Commissioner in Ireland appointed by the Minister for Justice and Equality under section 88 of the Courts of Justice Act, 1924, who attests that the 2013 court order “grant[s] [the Applicant’s father] joint guardianship with the mother of [the Applicant]. Furthermore, the [court order] awarded joint custody of [the Applicant] to [her father] which grants him ‘the day-to-day care and home life’ of both his children.”

In this case, the Applicant’s father has shown that he has shared responsibility for and authority over the Applicant, as required to meet the definition of legal custody at 8 C.F.R. § 322.1. Moreover, the Applicant’s father has also shown that the Applicant has been legitimated and currently resides with her U.S. citizen father, as indicated at 8 C.F.R. § 322.1(1)(iii). As such, the record is sufficient to show, by a preponderance of the evidence, that the Applicant’s U.S. citizen father has legal custody of the Applicant for purposes of section 322(a)(4) of the Act, and the sole reason for the denial of the instant Form N-600K therefore has been overcome.

Furthermore, section 322(a)(5) of the Act requires the Applicant to be temporarily present in the United States pursuant to a lawful admission to receive a Certificate of Citizenship. The regulation at 8 C.F.R. § 322.4 provides that the U.S. citizen parent and the child must appear in person before a USCIS officer for examination on the application. Because the record indicates that the Applicant and her father are currently in Ireland, the Director shall schedule an interview on the Form N-600K. The Director may request the Applicant’s father to bring to the interview any additional evidence deemed necessary to adjudicate the application.

III. CONCLUSION

The preponderance of the evidence shows that the Applicant is currently under 18 years of age and has a paternal U.S. citizen grandfather who was physically present in the United States for a period or periods totaling not less than five years, at least two of which were after his 14th birthday. The

³ The Applicant therefore qualifies as her father’s “child” under section 101(c) of the Act.

⁴ We use initials to protect the privacy of individuals.

information on the Form N-600K also indicates that the Applicant is currently residing outside the United States in the legal and physical custody of her U.S. citizen father. However, as the Applicant has not been scheduled for an interview before a USCIS officer, she has not had an opportunity to fulfill the remaining condition for issuance of a Certificate of Citizenship under section 322 of the Act, which requires her temporary presence in the United States pursuant to a lawful admission, and maintenance of such status. Accordingly, we will return the matter to the Director to schedule an interview on the Form N-600K.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.