**U.S. Department of Homeland Security**
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

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Date: JUN 1 8 2012 Office: NEW YORK, NY FILE: [redacted]

IN RE: APPLICANT: [redacted]

APPLICATION: Application for Certificate of Citizenship under section 322 of the Immigration and Nationality Act; 8 U.S.C. § 1433

ON BEHALF OF APPLICANT: Self-represented

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. Do not file any motion directly with the AAO. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

**DISCUSSION**: The District Director, New York, New York, denied the Application for Citizenship and Issuance of Certificate Under Section 322 (Form N-600K) and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant , to married parents. The applicant's father became a U.S. citizen on August 25, 2011. The applicant's mother is not a U.S. citizen. The applicant seeks a Certificate of Citizenship pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433, claiming he derived U.S. citizenship from his father.

The applicant filed the Form N-600K on September 28, 2011. On December 20, 2011, the director denied the application, finding that the applicant was not residing outside the United States in the legal and physical custody of his U.S. citizen father. *See Decision of the District Director.*

On appeal, the applicant, through his father, states that, even though the Form N-600K indicated that his father was living in the United States, his father departed the United States on September 1, 2011 for Albania, where he has since resided with him and his mother. *See Brief*, dated January 20, 2012. The applicant submits the Form I-290B, brief, affidavits and travel documents in support of the appeal.

Section 322(a) of the Act, 8 U.S.C. § 1433(a), applies to children born and residing outside of the United States, and provides, in pertinent part, that:

> 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. The Attorney General shall issue a certificate of citizenship to such applicant upon proof, to the satisfaction of the Attorney General, 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.

The regulations define the term "legal custody" to refer to "the responsibility for and authority over a child." 8 C.F.R. § 320.1.

The application may not be approved because U.S. Citizenship and Immigration Services (USCIS) regulations affirmatively require an applicant to establish eligibility for the benefit he is seeking at the time the application is filed. 8 C.F.R § 103.2(b)(1); *Matter of Katigbak*, 14 I&N Dec. 45 (BIA 1971)(noting that eligibility must be established at the time of filing). The record reflects that the applicant's father permanently resided in the United States from 2006 until the filing of the Form N-600K with only brief visits to Albania, totaling 104 days. *See Form N-600K; Lawful Permanent Resident Card, Albanian Passports and USCIS Records for Gjoke Sukaj; and Affidavits from Gjoke Sukaj, Nush Sukaj, Franco Sukaj and Klodjana Sukaj* Thus, the United States, not Albania, was the country of the applicant's father's residence when the Form N-600K was filed. "The term 'residence' means 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." Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33). Although the applicant's father states on appeal that he now permanently resides in Albania with the applicant, the evidence he submits in support of his claim is insufficient to show that Albania is now the applicant's father's place of residence.

In addition, the *Instructions* to the Form N-600K at page 6 require the child to sign the application if he or she is over the age of 14. Here, the applicant, who was over the age of 17 when the application was filed, did not sign the Form N-600K at Part 7 because he was not residing with his father at the time the application was submitted to USCIS. As such, the AAO cannot find that the applicant was residing outside of the United States in the legal and physical custody of his father at the time the Form N-600K was filed.

Finally, in order to approve the Form N-600K the beneficiary must be temporarily present in the United States pursuant to a lawful admission. 8 C.F.R. § 322.2(a)(5). The record does not reflect that the beneficiary has been temporarily admitted to the United States pursuant to a lawful admission and is maintaining such lawful status in the United States.

The applicant bears the burden of proof in these proceedings to establish the claimed citizenship by a preponderance of the evidence. 8 C.F.R. § 341.2(c). Because the applicant has not met his burden of showing that he meets the requirements of section 322 of the Act, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.