



U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: **AUG 23 2013** Office: WASHINGTON, D.C. 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Washington, D.C., and the matter came before the Administrative Appeals Office (AAO) on appeal. The appeal was dismissed. The applicant has filed a motion to reopen. The motion will be granted. The

According to the regulation at 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by documentary evidence. The applicant's father states in his motion that he was granted physical and legal custody of the applicant in accordance with the law in Cote d'Ivoire. *See* Statement of the Applicant's Father on Form I-290B, Notice of Appeal or Motion. The motion is accompanied by a "Certificate of Parental Power," a translation of sections of the Cote d'Ivoire legal code, a summary and analysis related to the laws of Cote d'Ivoire, a copy of the applicant's mother's passport, employment letter and rental receipt.

The applicant's submission meets the requirement of a motion to reopen. The motion will therefore be granted. The AAO's decision will be affirmed and the appeal will remain dismissed.

The applicant was born on September 9, 1993 in Cote d'Ivoire. His father, [REDACTED] became a U.S. citizen upon his naturalization on November 14, 2006. The applicant's mother, [REDACTED] is not a U.S. citizen. The applicant's parents were married in 1988. The applicant's father resides in the United States. The applicant resides in Cote d'Ivoire with his mother. The applicant's father seeks a certificate of citizenship claiming that the applicant acquired U.S. citizenship through him pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433, as amended by the Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000).

Section 322 of the Act, as amended, 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. 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; 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 applicant [citizen parent] (or, if the citizen parent is deceased, an individual who does not object to the application).
- (5) The child is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.

...

As stated in the AAO's February 2, 2011 decision, in order to satisfy the requirements of section 322(a)(4) of the Act, the applicant must establish that he resides outside of the United States in the legal and physical custody of a U.S. citizen parent. The AAO notes that, by the applicant's father's own statements, the applicant is residing in Cote d'Ivoire with his mother. The applicant's father maintains that the applicant remains in his legal and physical custody. Section 322(a)(4) of the Act, however, requires both that the applicant be residing outside the United States with his U.S. citizen parent and that the U.S. citizen parent have legal and physical custody. The documents submitted with the applicant's motion indicate that the applicant's father retains custody of the applicant. Nevertheless, the record clearly indicates that the applicant's father resides in Washington, D.C., and the applicant resides in Cote d'Ivoire. The applicant therefore cannot establish eligibility for citizenship under section 322(a)(2)(4) of the Act because he is not residing outside the United States with his U.S. citizen parent.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. The AAO's February 2, 2011 decision dismissing the appeal will therefore be affirmed.

**ORDER:** The motion is granted. The AAO's February 2, 2011 decision is affirmed.  
The appeal is dismissed.