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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



U.S. Citizenship
and Immigration
Services

DATE: OCT 30 2013

OFFICE: HARLINGEN, TX

FILE: [REDACTED]

IN RE: [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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Form N-600K, Application for Citizenship and Issuance of Certificate Under Section 322 (Form N-600K) was denied by the Field Office Director, Harlingen, Texas (director). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Mexico on June 8, 2011, to unmarried parents. Her parents subsequently married in Texas on November 5, 2012. The applicant's father was born in the United States on October 10, 1985, and he is a U.S. citizen. The applicant's mother is not a U.S. citizen. The applicant presently seeks a Certificate of Citizenship pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433, based on the claim that she derived U.S. citizenship through her father.

In a decision dated April 16, 2013, the director determined that the applicant failed to establish that she resides abroad in the legal and physical custody of her U.S. citizen parent, as required under section 322 of the Act. The application was denied accordingly.

On appeal, the applicant concedes that she did not live abroad with her U.S. citizen father; however, she indicates that since the date of her Form N-600K interview, she has resided in the United States with her father, and she requests that her application be granted.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

Section 322 of the Act applies to children born and residing outside of the United States, and 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. The [Secretary] 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) 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.

Under the Act, “[t]he 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).

Because the applicant was born abroad, she is presumed to be an alien and bears the burden of establishing her claim to U.S. citizenship by a preponderance of credible evidence. *See Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008). *See also*, 8 C.F.R. § 341.2(c) (the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence.) The “preponderance of the evidence” standard requires that the record demonstrate that the applicant’s claim is “probably true,” based on the specific facts of each case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989)). Even where some doubt remains, an applicant will meet this standard if she or he submits relevant, probative and credible evidence that the claim is “more likely than not” or “probably” true. *Id.* (citing *INS v. Cardoza-Fonseca*, 480 U.S. 421, 431 (1987)).

In the present matter, the record contains no evidence to indicate or establish that the applicant resided abroad in the physical custody of her father; moreover, the record reflects that the applicant’s U.S. citizen father stated during the Form N-600K interview, that he did not live abroad with the applicant. The applicant also states on appeal that her father lives in the United States, and that he does not live with her in Mexico. The applicant has therefore failed to establish that she resides outside of the United States in the legal and physical custody of her U.S. citizen parent, as required under section 322(a)(4) of the Act.

Because the applicant failed to establish that she meets the custody requirements set forth in section 322(a)(4) of the Act, the applicant does not qualify for citizenship under section 322 of the Act. Accordingly, the remaining requirements contained in section 322 of the Act need not be addressed.

The regulation provides at 8 C.F.R. § 341.2(c) that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. Here, the applicant has failed to meet her burden of proof. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.