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

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

Date: APR 11 2014 Office: EL PASO, TX [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship

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 Field Office Director, El Paso, Texas (director) denied the applicant's Form N-600K, Application for Certificate of Citizenship and Issuance of Certificate under Section 322. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will remain denied.

Pertinent Facts and Procedural History

The applicant was born in Mexico on February 9, 2012. His father, became a U.S. citizen upon his naturalization on November 21, 2006. The applicant, through his father, seeks a certificate of citizenship pursuant to section 322 of the Act, 8 U.S.C. § 1433.

The director deemed the application abandoned based upon the applicant's failure to appear at his scheduled interviews. On appeal, the applicant, through his father, states that the interview notices were not received in a timely manner.

Applicable Law

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). By filing this Form N-600K, the applicant's father is seeking a certificate of citizenship for the applicant under section 322 of the Act, which 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]. The [Secretary of Homeland Security (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 applicant [citizen parent] . . . .
>
> (5) The child is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.
>
> (b) Upon approval of the application (which may be filed from abroad) and, except as provided in the last sentence of section [337(a) of the Act], upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this [Act] of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the [Secretary] with a certificate of citizenship.

* * *

Analysis

The applicant is a minor, born in 2012. U.S. Citizenship and Immigration Services (USCIS) received the Form N-600K on October 22, 2012. While the applicant's address was listed on the Form N-600K at Part 3.A as [redacted], Mexico, his father's address was listed as [redacted], Nebraska at Part 4.H.2. In support of the appeal, the applicant's father states that his permanent address is in the United States, but that he was on holiday in Mexico with his family for three months from December 2012 through February 2013 and he, therefore, did not receive the interview notices.

A preponderance of the relevant evidence fails to establish that the applicant was residing outside of the United States in the legal and physical custody of his father when the Form N-600K was filed, as such evidence indicates the applicant's father's primary residence in Nebraska, not Mexico, and that he only periodically visits the applicant and his family in Mexico.[1] Consequently, the applicant has not met the condition of section 322(a)(4) of the Act, which requires an applicant to reside outside of the United States in the legal and physical custody of his U.S. citizen parent.[2]

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[1] "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.

[2] The applicant may have acquired U.S. citizenship at birth under section 301(g) of the Act, 8 U.S.C. § 1401(g). A citizenship claim by an individual physically present outside of the United States must be made before the U.S. Department of State (DOS) through a consular officer. *See* Section 104(a) of the Act, 8 U.S.C. § 1104(a) (providing, in pertinent part, that the "Secretary of State shall be charged with the administration and the enforcement of the provisions of this Act and all other immigration and nationality laws relating to . . . (3) the determination of nationality of a person not in the United States"); *see also* 22 C.F.R. § 50.2 (providing that DOS "[s]hall determine claims to United States nationality when made by persons abroad on the basis of an application for registration, for a passport, or for a Consular Report of Birth Abroad of a Citizen of the United States of America . . ."). Such a claim may be made by an individual residing in the United States by filing a Form N-600, Application for Certificate of Citizenship.

Conclusion

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.

ORDER: The appeal is dismissed.