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

(b)(6)

U.S. Citizenship and Immigration Services

Date: APR 11 2014 Office: LOS ANGELES, CA

IN RE: Applicant

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 Director of the Los Angeles, California Field Office (the director) denied the Application for Citizenship and Issuance of Certificate under Section 322 (Form N-600K) and 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 March 5, 2009. He was adopted by and on June 13, 2011. The applicant's adoptive parents were married in 2004. The applicant's adoptive father is a U.S. citizen, born in California in 1954. The applicant, through his father, seeks a certificate of citizenship claiming that he acquired U.S. citizenship pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433, as amended.

The director denied the application finding that the applicant was not residing abroad with a U.S. citizen parent. Specifically, the director noted that the applicant was residing with his family in Long Beach, California.

On appeal, the applicant, through his father, maintains that he is only temporarily present in the United States pursuant to a lawful admission as a visitor (B-2 status). *See* Statement in Support of Appeal. The applicant's father explains that the family maintains a home in Tijuana, Mexico, and that their home in Long Beach, California was rented to facilitate his commuting to and from Mexico while he attended to his family business. *Id.*

Applicable Law

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), effective as of February 27, 2001, amended section 322 of the Act to include foreign-born children who did not automatically acquire citizenship under section 320 of the Act and who reside outside the United States with a U.S. citizen parent. *See* section 322(a)(4) of the Act ("the child is residing outside of the United States in the legal and physical custody of the [parent]").

Section 320 of the Act, 8 U.S.C. § 1431, allows the automatic acquisition of U.S. citizenship when all of the following conditions have been met on or after February 27, 2001: the child has at least one parent who is a U.S. citizen by birth or through naturalization; the child is under 18 years of age; the child is an lawful permanent resident (LPR); and the child is residing in the United States in the legal and physical custody of the U.S. citizen parent.

Section 322 of the Act 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.

(c) Subsections (a) and (b) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

Analysis

U.S. Citizenship and Immigration Services (USCIS) received the Form N-600K on July 20, 2012.[1] While the applicant's address was listed on the Form N-600K at Part 3.A as Tijuana, Mexico, his father's address was listed as Los Angeles, California at Part 4.H.2. The applicant's father asserted that he, his spouse, and the applicant maintain a home in Tijuana, Mexico, but that he also rents a home in Long Beach, California so that he can commute between Tijuana and California, where his family business is located. In support of the Form N-600K, the applicant's father submitted: copies of his 2010, 2011 and 2012 individual income tax returns (Form 1040), showing a residential address in Los Angeles, California; a residential lease agreement, dated in May 2013, for a residence in Long Beach, California; an employment letter from Company, dated June 17, 2013, stating that he has been employed by the company since December 1998; and a temporary resident card issued by Mexican authorities, valid December 13, 2012 until November 18, 2013.

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 is in California, not Mexico.[2] The only evidence of the applicant's father Mexican residence is a temporary card, valid from December 2012 until November 2013. When the applicant's father filed the Form N-600K in July 2012, his Mexican temporary residence card was not valid and it has since expired. 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.

Furthermore, the applicant's father has not satisfied section 322(a)(2)(A) of the Act, which requires him to demonstrate five years of physical presence in the United States, two years of which were after reaching the age of fourteen.

The regulation at 8 C.F.R. § 322.3(b)(1)(vii) requires an applicant to submit "documentation establishing that the U.S. citizen parent . . . meets the required physical presence requirements (e.g., school records, military records, utility bills, medical records, deeds, mortgages, contracts, insurance policies, receipts, or attestations by churches, unions, or other organizations)." Here, the applicant's father submits only the June 2013 employment letter as evidence of his physical presence for the required period of time; he has not submitted any of the documentation listed in the regulation at 8 C.F.R. § 322.3(b)(1)(vii) or other similar documentation. The June 2013 employment letter fails to establish the applicant's father's physical presence in the United States for five years, two of which were after the age of fourteen, as it does not indicate the location of

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[1] Although the applicant's father states that he initially filed the Form N-600K in March 2012, it was not receipted by USCIS as properly filed until July 2012. *See* 8 C.F.R. § 103.2(a)(7).

[2] "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.

his employment, the exact time periods, and is not supported by evidence of the wages he earned during the listed time period.

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.[3]

ORDER: The appeal is dismissed. The application remains denied.

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[3] Should the applicant be admitted to the United States as a lawful permanent resident prior to his eighteenth birthday, he may submit an Application for Certificate of Citizenship (Form N-600) so that USCIS may determine whether he automatically acquired U.S. citizenship pursuant to section 320 of the Act.