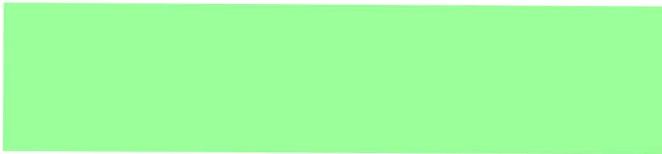




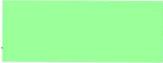
U.S. Citizenship  
and Immigration  
Services

(b)(6)

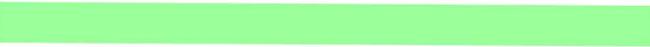


Date: **JUL 08 2014**

Office: NEW ORLEANS, LA

FILE: 

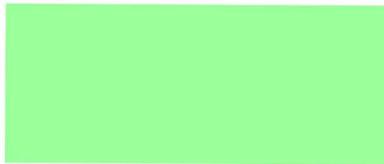
IN RE:

Applicant: 

APPLICATION:

Application for Certificate of Citizenship under section 322(a) of the Immigration and Nationality Act.

ON BEHALF OF APPLICANT:



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 New Orleans, Louisiana Field Office (the 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 December 12, 2006. His father, [REDACTED] became a U.S. citizen upon his naturalization on February 25, 2010. The applicant, through his father, seeks a certificate of citizenship pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The director denied the application upon finding that the applicant was not residing in his father's physical custody. *See Director's Decision*, dated October 9, 2013.

On appeal, the applicant, through counsel, states that his parents are married and that he is therefore in the legal custody of his father. *See Statement of the Applicant on Form I-290B, Notice of Appeal or Motion*. Counsel indicated on the Form I-290B, dated October 3, 2013, that he would submit a brief or additional evidence to the AAO within thirty days. As of this date, however, the record contains no additional evidence.

*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 2006. While the applicant's address was listed on the Form N-600K at Part 3.A as the same as his father's in [REDACTED] Mississippi, the record indicates that the applicant resides in Mexico with his mother, as specified by a physician's letter and school records from Mexico. The record also contains several remittance receipts indicating that the applicant's father sent money to the applicant's mother in Mexico, as well as evidence that the applicant's father is employed and owns a home in the United States. Thus, the applicant cannot establish that he is residing outside the United States in his father's physical custody.

The applicant, through counsel, maintains that he is in his father's legal custody because his parents are still married. Section 322(a)(4) of the Act requires an applicant to reside outside of the United States in the legal *and physical* custody of his U.S. citizen parent. Thus, whether or not the applicant is in his father's legal custody, he still needs to establish that he is residing in his father's physical custody. The applicant's father resides in the United States, while the applicant resides with his mother in Mexico. Thus, the applicant cannot establish that he is residing outside the United States in his father's physical custody.

### *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.