



U.S. Citizenship  
and Immigration  
Services

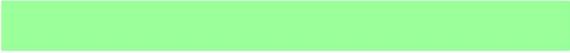
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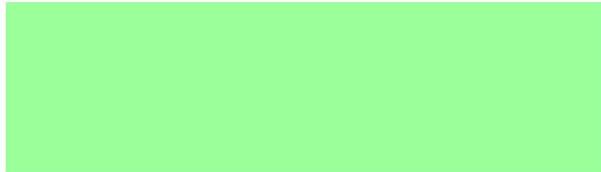
OFFICE: CHARLOTTE, NC

FILE: 

IN RE: 

APPLICATION: Application for Certificate of Citizenship under section 322 of the Immigration and Nationality Act; 8 U.S.C. § 1433

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 Charlotte, North Carolina 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.

*Pertinent Facts and Procedural History*

The applicant was born in Haiti on November 11, 1998, and he was admitted into the United States as a lawful permanent resident on December 28, 2005, when he was seven years old. The applicant's father became a naturalized U.S. citizen on November 8, 2012, when the applicant was 13 years old. His mother is not a U.S. citizen. The applicant 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 he derived U.S. citizenship through his father.

In a decision dated November 13, 2013, the director determined that the applicant failed to establish that he resides abroad in the physical custody of his U.S. citizen parent, or that he is temporarily present in the United States pursuant to a lawful admission, as required under section 322 of the Act. The application was denied accordingly.

On appeal the applicant indicates, through counsel, that the record establishes that he resides in Haiti with his father and family; he travels to the United States during holidays and in the summer; and he satisfies the requirements for derivative citizenship under section 322 of the Act.

*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 entire record was reviewed and considered in rendering a decision on the appeal.

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 . . . physical custody of the [parent]”).<sup>1</sup> 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).

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<sup>1</sup> The conditions contained in section 322(a)(1), (2), and (3) of the Act are not at issue in the director's decision. The applicant also established that he is the legitimate child of his U.S. citizen father, as the term is defined in section 101(c) of the Act; 8 U.S.C. § 1101(c), since under Haitian law, children born out of wedlock after January 27, 1959, and acknowledged by their natural father have the same rights and obligations as legitimate children. *See Matter of Richard*, 18 I&N Dec. 208 (BIA 1982).

*Analysis*

The applicant's father states in a letter, dated December 12, 2013, that he has lived in Haiti with his wife, the applicant, and the applicant's sister since 2011, and that they work as missionaries at the [REDACTED] in [REDACTED] Haiti. He states that they kept their address at: [REDACTED], North Carolina, because his mother-in-law inherited the house, and they lived there before moving to Haiti. He clarifies further that his family spends the school year in Haiti, and they return to their home in North Carolina each summer. 2011 federal income tax documents filed by the applicant's parents reflect that the applicant resides at: [REDACTED] NC with his family; and that the applicant's parents earned a total income of \$59,172 in 2011, of which \$8,531 was foreign income earned by the applicant's father at [REDACTED] in Haiti between June 29, 2011 and June 20, 2012. A letter from the director of [REDACTED], dated December 3, 2013, states that the applicant's father has been employed with [REDACTED] since the fall of 2011. A second letter from the director, dated December 3, 2013, states that the applicant's step-mother has been employed by [REDACTED] since August 2011. The Registrar of [REDACTED] states in a November 20, 2013, letter that the applicant is enrolled as a 9<sup>th</sup> grader at [REDACTED].

Section 322 of the Act applies to children who regularly reside abroad in their U.S. citizen parent's custody. The evidence in the record, which includes the applicant's parents' tax returns and statements from the applicant's father, establish that the applicant's "principal, actual dwelling place in fact" is in North Carolina, and that the applicant is not regularly residing abroad in Haiti. The applicant has therefore failed to establish that he resides outside of the United States in the physical custody of his U.S. citizen parent, as required under section 322(a)(4) of the Act.<sup>2</sup>

*Conclusion*

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 his burden of proof. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

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<sup>2</sup> The applicant may have acquired U.S. citizenship under section 320 of the Act, 8 U.S.C. § 1431. 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) In the alternative, the applicant may file an Application for Certificate of Citizenship (Form N-600) with U.S. Citizenship and Immigration Services when he is physically present in the United States.