



U.S. Citizenship  
and Immigration  
Services

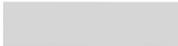
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Date:

**MAR 25 2015**

Office: KENDALL FIELD OFFICE

FILE: 

IN RE:

Applicant: 

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,

  
A-

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Kendall Field Office Director, Miami, Florida, 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. .

*Pertinent Facts and Procedural History*

The applicant was born in Cuba on [REDACTED]. His mother became a U.S. citizen upon her naturalization on March 8, 2013. The applicant, through his mother, seeks a certificate of citizenship pursuant to section 322 of the Act, 8 U.S.C. § 1433.

The director determined the applicant to be ineligible for a certificate of citizenship under section 322 of the Act due to inability to meet the foreign residence requirement of section 322(a)(4). On appeal, the applicant, through his mother, acknowledges having mistakenly filed Form N-600K, when she should have filed Form N-600, Application for Certificate of Citizenship. She provides a Form N-600 with the appeal and asks that we grant her certificate application.

*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 mother 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.

\* \* \*

*Analysis*

The applicant is a minor, born in [REDACTED]. He became a lawful permanent resident on July 19, 2001. U.S. Citizenship and Immigration Services (USCIS) received the Form N-600K filed on his behalf on April 22, 2013. It is undisputed that the applicant resides in Miami, Florida at the address listed on Form N-600K at Part 3.A and that his mother resides at the same address, which is listed at Part 4.D. Consequently, the applicant cannot meet 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.<sup>1</sup>

*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.

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<sup>1</sup> The applicant may have acquired U.S. citizenship under section 320(a) of the Act, 8 U.S.C. § 1431(a), providing for automatic acquisition of citizenship of a child upon naturalization of at least one parent, if the child is a lawful permanent resident of the United States residing in the legal and physical custody of the citizen parent and under 18 years old. A citizenship claim by an individual living permanently in the United States must be made using Form N-600. As this matter is before us on appeal from denial of a Form N-600K application, an erroneous filing, we must dismiss the appeal.

We note, however that the record reflects applicant's mother filed together with this appeal a Form N-600, along with a Form I-912, Request for Fee Waiver, and that the fee waiver was approved. As the record appears to contain an unadjudicated Form N-600, dismissal of the appeal permits processing of the pending N-600 to proceed.