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**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF J-S-A-N-

DATE: OCT. 22, 2015

APPEAL OF MIAMI FIELD OFFICE DECISION

APPLICATION: FORM N-600K, APPLICATION FOR CITIZENSHIP AND ISSUANCE OF CERTIFICATE UNDER SECTION 322

The Applicant, a native of Cambodia and citizen of France, seeks a Certificate of Citizenship. *See* Immigration and Nationality Act (the Act) § 322, 8 U.S.C. § 1433. The Director, Miami Field Office, denied the application. The matter is now before us on appeal. The appeal will be sustained.

The Applicant was born on [REDACTED] and adopted by a couple consisting of a U.S. citizen mother and French citizen father who married on [REDACTED] 2004. The adoption was finalized on [REDACTED], 2010 in [REDACTED] France and the Applicant first entered the United States on June 4, 2011 on an A-2 non-immigrant visa along with his adoptive father, who arrived to assume the position of [REDACTED] at the [REDACTED] in [REDACTED] Florida. His mother is a U.S. citizen by birth, while his father has never been a U.S. citizen. The Applicant's mother, who resided here from her birth on [REDACTED] 1962, until 2004, applied for naturalization on the Applicant's behalf pursuant to section 322 of the Act.

The director determined that the Applicant had not met the foreign residence requirement of subsection 322(a)(4) of the Act, and denied the application accordingly. *Decision of the Director*, June 6, 2013. On appeal, the Applicant claims that he has satisfied the requirements set forth in the Act and submits additional evidence in support of his claim.

We conduct 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 this decision on appeal.

Section 322 of the Act, as amended by the Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631, applies to this appeal because the child was not yet 18 years old as of the February 27, 2001 effective date of the CCA. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 156 (BIA 2001) (en banc). Section 322 of the Act provides in pertinent part:

(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. The Attorney General shall issue a certificate of citizenship to such applicant upon proof, to the satisfaction of the Attorney General, that the following conditions have been fulfilled:

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- (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; . . .
- (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 [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 . . . 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 Attorney General 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).

Section 101(b)(1)(E)(i) of the Act, 8 U.S.C. § 1101(b)(1)(E)(i), states that the term “child” includes “a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years.”

Here, the Applicant has shown that he meets the requirements set forth in section 101(b)(1)(E)(i) of the Act. First, the evidence indicates the adoption became final on [REDACTED], 2010, when the Applicant was [REDACTED] year old. Second, the Applicant has resided with his adoptive parents since his arrival in France on [REDACTED], 2009. *See Bureau of Adoptions Letter*, July 9, 2009. Third, documentation reflects that he continues to reside in the physical and legal custody of his parents, and that this period exceeds two years. *See* 8 C.F.R. § 322.1 (“In the case of an adopted child, a determination that a U.S. citizen parent has legal custody will be based on the existence of a final adoption decree.”). Accordingly, the Applicant may apply for a certificate of citizenship pursuant to section 322(a) of the Act. *See* Section 322(c) of the Act.

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The Applicant contends he has provided sufficient evidence that he regularly resides outside of the United States, as required by subsection 322(a)(4) of the Act. Documentation establishes that his parents maintain a permanent residence in the town of [REDACTED] (France), that his father's position as a press officer in the French foreign service requires him to reside temporarily overseas as directed by his government, and that the Applicant currently lives with his parents in Canada during such a posting. Therefore, the Applicant has established that he regularly resides outside of the United States.

Subsection 322(a)(5) of the Act requires the child to be temporarily present in the United States pursuant to a lawful admission. "[I]n certain circumstances, this evidence may be presented at the time of interview." 8 C.F.R. § 322.3(b)(viii). Here, the record indicates that the Applicant and his U.S. citizen mother were present in the United States when the application was filed, having moved here temporarily as a result of the Applicant's father's diplomatic posting, but have since relocated to Canada for the same reason. Accordingly, this matter will be returned to the field office to schedule an interview on the application. Pursuant to 8 C.F.R. § 322.4, the Applicant and his mother may send a written request to the field office noting their preferred interview dates. *See* Instructions for Form N-600K, Application for Citizenship and Issuance of Certificate Under Section 322.

The burden of proof rests on the claimant to establish the claimed citizenship by a preponderance of the evidence. *See* 8 C.F.R. § 341.2(c). Here, the Applicant has met this burden.

ORDER: The appeal is sustained.

Cite as *Matter of J-S-A-N-*, ID# 13018 (AAO Oct. 22, 2015)