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

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

MATTER OF M-A-R-

DATE: SEPT. 16, 2015

APPEAL OF YAKIMA FIELD OFFICE DECISION

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

The Applicant, a minor child, seeks a certificate of citizenship. *See* Immigration and Nationality Act (the Act) § 322, 8 U.S.C. § 1433. The Field Office Director, Yakima, Washington, denied the application. The matter is now before us on appeal. The appeal will be remanded to the Field Office Director for further proceedings consistent with this opinion and for the entry of a new decision.

The record establishes the Applicant was born in Iraq on [REDACTED]. His father is an Iraqi citizen and his mother a U.S. citizen by birth in the United States. His maternal grandmother is also a U.S. citizen by birth. The grandmother seeks a certificate of citizenship on her grandson's behalf.

The Applicant's mother was born in the United States on [REDACTED]. After her parents' [REDACTED] divorce, her father took her (along with two siblings) on or before [REDACTED] 1992 to Iraq, where she has resided since leaving the United States. She married in [REDACTED] Iraq, in 2007 and gave birth to the Applicant there in [REDACTED]. Her application for a Consular Report of Birth Abroad on behalf of the Applicant was denied by the U.S. Department of State, which found that she had not fulfilled the statutory requirement of five years physical presence in the United States, at least two of which were after the age of [REDACTED].

The Form N-600K was denied for lack of documentation of the grandmother's U.S. presence, identity, and relationship to the Applicant. On appeal, the Applicant provides additional documentation to support his grandmother's claim to be the Applicant's maternal grandmother and establish her U.S. presence since birth.

By filing this Form N-600K, the Applicant is seeking a certificate of citizenship 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:

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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; 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 of 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.

The Applicant is a minor, born in [REDACTED]. His mother was taken to Iraq by her father in 1992 at the age of [REDACTED]. As she has not returned to the United States, she cannot establish having been physically present here after turning [REDACTED]. Therefore, the Applicant must show that the U.S. citizen parent of his U.S. citizen parent meets the physical presence requirements.

The Director found the application contained insufficient evidence of the U.S. citizenship of the Applicant's maternal grandmother, did not show she had the required U.S. physical presence, and failed to document she was married to his mother's Iraqi father when his mother was born. On appeal, the Applicant provides evidence to overcome the Director's finding that he had not established the claimed grandparent relationship or shown his grandmother satisfies the U.S. citizenship and physical presence requirements. This evidence, including his grandmother's Georgia

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birth certificate and documentation of her divorce and custody dispute,¹ is sufficient to establish the relationship and U.S. presence needed to meet the requirements of section 322(a)(2)(B) of the Act.

The Applicant has overcome the reasons for the denial stated in the Director's decision. However, we conduct appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). We note that the Applicant's grandmother signed the application before us on appeal. The regulation at 8 C.F.R. § 322.3(a) provides:

A U.S. citizen parent of an alien child . . . may file an application for the child to become a citizen and obtain a certificate of citizenship under section 322 of the Act by submitting an application on the form prescribed by USCIS in accordance with the form instructions If the U.S. citizen parent has died, the child's U.S. citizen grandparent or U.S. citizen legal guardian may submit the application

The record reflects that the Applicant's mother is alive, and therefore it appears that the Form N-600K must be signed by the Applicant's mother rather than his grandmother. Further, we note that pursuant to section 322(a)(5) of the Act, the Applicant must be temporarily present in the United States pursuant to a lawful admission in order for USCIS to conduct the interview and examination needed to complete processing of the Form N-600K. *See also* 8 C.F.R. §§ 322.3(b)(viii) and 322.4 and *Instructions for Form N-600K, Application for Citizenship and Issuance of Certificate Under Section 322*, page 7.² The matter will therefore be remanded to the Director for any further processing necessary.

ORDER: The matter is remanded to the Director, Yakima Field Office, for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of M-A-R-*, ID#11316 (AAO Sept. 16, 2015)

¹ The record reflects that, within 10 days of the [REDACTED] 1992 divorce decree, the Applicant's maternal grandfather took his three children, including the Applicant's mother, to Iraq in violation of a court-approved parenting plan.

² Form instructions explain processing details, including the Applicant's need to obtain a visa to enter the United States, and advise the Applicant (and the person acting on the Applicant's behalf) to await an appointment notice before traveling here.