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

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

MATTER OF T-V-D-

DATE: APR. 28, 2016

APPEAL OF ATLANTA FIELD OFFICE DECISION

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

The Applicant, a citizen of Vietnam, seeks a Certificate of Citizenship. *See* Immigration and Nationality Act (the Act) § 322, 8 U.S.C. § 1433. A U.S. citizen parent may apply for a Certificate of Citizenship on behalf of a child residing outside the United States if the child is residing in the U.S. citizen parent's custody, and that parent had been physically present in the United States for 5 years, 2 of which were after the parent turned 14 years old.

The Director, Atlanta, Georgia Field Office, denied the application. The Director concluded that the Applicant did not demonstrate that he resided outside of the United States in the physical custody of his adoptive mother for at least 2 years, as required under section 322 of the Act.

The matter is now before us on appeal. Through counsel, the Applicant asserts that he has lived in Taiwan in his adoptive mother's physical custody since [REDACTED] 2010, and that he has satisfied the requirements for issuance of a certificate of citizenship as set forth in section 322 of the Act.

Upon *de novo* review, we will sustain the appeal.

I. LAW

The Applicant claims eligibility for issuance of a certificate of citizenship under section 322 of the Act through his adoptive U.S. citizen mother.

As amended by the Child Citizenship Act (CCA) of 2000 [Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000)], which took effect on February 27, 2001, section 322 of the Act applies to children born and residing outside of the United States. It 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 [now Secretary of the Department of Homeland Security (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 [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 [Secretary] 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).

Because the Applicant was adopted, he falls under the provisions of section 322(c) of the Act. Therefore, the Applicant must establish that he meets the requirements applicable to adopted children under section 101(b)(1) of the Act, 8 U.S.C. § 1101(b)(1), which provides, in pertinent part:

The term "child" means an unmarried person under twenty-one years of age who is-...

(E) (i) a child adopted while under the age of sixteen years if the child has

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been in the legal custody of, and has resided with, the adopting parent or parents for at least two years ....

## II. ANALYSIS

The Applicant was born in Taiwan on [REDACTED], to a Vietnamese mother. On [REDACTED] 2011, the Applicant was adopted by his married U.S. citizen adoptive mother and father. *See* [REDACTED] 2011, *Civil Decree from the [REDACTED] Taiwan*. On May 1, 2014, the Applicant's adoptive mother filed a Form N-600K, Application for Citizenship and Issuance of Certificate under Section 322, on behalf of the Applicant.

The Applicant has established that he meets several requirements for issuance of a certificate of citizenship under section 322 of the Act. Specifically, birth certificate evidence for the Applicant and for his adoptive mother demonstrates that the Applicant is under the age of 18, and that his adoptive mother was born a U.S. citizen. The Applicant therefore satisfies the first and third requirement of section 322 of the Act. In addition, birth certificate, Social Security earnings statements and affidavit evidence contained in the record demonstrate that the Applicant's adoptive mother was physically present in the United States for over 5 years, at least 2 of which were after she attained the age of 14. The Applicant has thus also demonstrated that he satisfies the requirements set forth in § 322(a)(2)(A) of the Act.

At issue is whether the Applicant has shown that he resided outside of the United States in the legal and physical custody of his U.S. citizen adoptive mother. On appeal, the Applicant claims that his parents had physical custody over him since [REDACTED] 2010. The Applicant additionally asserts that, although his birth and adoption certificates contain discrepancies with regard to his name, his biological parents' names, and his biological parents' dates of birth, the documents are valid, and they are sufficient to establish the Applicant's legal adoption. We find that the evidence submitted, including documentation submitted on appeal, supports these contentions.

### A. Requirements pertaining to children adopted by U.S. citizens

As stated above, before an adopted child may be issued a certificate of citizenship under section 322 of the Act, that child must have resided in the legal and physical custody of the adoptive U.S. citizen parent for at least 2 years. Legal custody vests over an adopted child by virtue of a court decree. *See Matter of Harris*, 15 I&N Dec. 39, 41 (BIA 1970); 8 C.F.R. § 322.1(2). The 2-year residence requirement set forth in section 101(b)(1)(E) of the Act may be satisfied either before or after the adoption. *Matter of Repuyan*, 19 I&N Dec. 119, 120 (BIA 1984).

#### 1. Legal custody of the U. S. citizen parent

The regulations provide that legal custody "refers to the responsibility for and authority over a child." *See* 8 C.F.R. § 322.1. Under the regulation, "a determination that a U.S. citizen parent has legal custody will be based on the existence of a final adoption decree." *See* 8 C.F.R. § 322.1(2).

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We note that the Director's decision does not state that the validity of the Applicant's adoption decree is at issue in the Applicant's case. Nevertheless, the Director points out that two birth certificates submitted for the Applicant contain unresolved discrepancies with regard to the Applicant's name, his biological parents' names, and his biological parents' dates of birth.

The record contains a birth certificate, issued on [REDACTED] that contains no name for the Applicant. The birth certificate reflects that the Applicant was born at [REDACTED] on [REDACTED], to [REDACTED] born [REDACTED]. The birth certificate reflects further that the Applicant's biological mother's spouse was [REDACTED] born [REDACTED]. A second English language birth certificate, printed January 15, 2015, and issued by [REDACTED] references the original birth certificate's case history and serial number, and states that the Applicant's name is [REDACTED] that his mother is [REDACTED] born [REDACTED] and that his father is [REDACTED] born [REDACTED]. A third English language birth certificate, submitted on appeal and printed by [REDACTED] on April 10, 2015, states that the Applicant's name is [REDACTED] and that his mother is [REDACTED] born [REDACTED] and his father is [REDACTED] born [REDACTED].

The Applicant explains on appeal that the law in Taiwan prohibits hospitals from adding names to official birth certificates, but that in order to comply with U.S. Citizenship and Immigration Services' requests for an amended birth certificate with his name, he asked [REDACTED] to prepare a non-official birth certificate. The Applicant indicates that the English language birth certificate prepared by [REDACTED] in January 2015, contained erroneous parental name translation and date of birth information. A letter from [REDACTED] states similarly that the English language birth certificate that it issued to the Applicant on January 15, 2015, contained discrepancies with regard to names and dates of birth. The hospital states that it issued a third, April 10, 2015, English language birth certificate to the Applicant in order to correct its January 2015 certificate errors, and the hospital asks that its January 15, 2015, birth certificate for the Applicant be disregarded. The letter from [REDACTED] indicates further that the Applicant's original Taiwanese birth certificate does not state the Applicant's father's name, and instead refers to [REDACTED] as the Applicant's mother's spouse. In addition, the letter indicates that birth certificates in Taiwan do not contain an infant's name because the purpose of the document is solely to record the birth; that hospitals in Taiwan issue birth certificates for infants born in the hospital, and there is no official government office that issues birth certificates; and that a household registry office tracks all births and names of children born in Taiwan, but that the household registry office is only for Taiwanese citizens or permanent residents.

These statements are consistent with U.S. Department of State guidance. This guidance corroborates that, once issued, Taiwan birth certificates cannot be modified or amended; that all Taiwan residents are part of a household registry system that tracks events such as births; and that applicants may apply for a birth certificate from the hospital of birth and/or from the local Household Registration office where a child was registered at the time of birth. As such, the Applicant has therefore overcome the discrepancies contained in his birth certificates.

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The record contains a final adoption decree, issued on [REDACTED] 2011, by the [REDACTED] in Taiwan, reflecting that the Applicant was adopted, at the age of [REDACTED] in [REDACTED] Taiwan, by his U.S. citizen married parents. According to U.S. Department of State guidance on adoption procedures in Taiwan, all applications for adoption are submitted to the [REDACTED] and the court rules on the adoption and publishes a final adoption ruling. See Department of State guidance at <http://travel.state.gov>.<sup>1</sup> The Applicant has therefore established that his adoptive mother has had legal custody over the Applicant since [REDACTED] 2011. As discussed further in section B. below, the Applicant also demonstrated that he has resided outside of the United States in his U.S. citizen adoptive mother's physical custody since [REDACTED] 2011.

2. Residence outside the United States in the physical custody of the U.S. citizen parent

Neither the Act nor the regulations define the term "physical custody." However, "physical custody" has been considered in the context of "actual uncontested custody" in derivative citizenship proceedings and interpreted to mean actual residence with the parent. See *Bagot v. Ashcroft*, 398 F.3d 252, 267 (3rd Cir. 2005) (father had actual physical custody of the child where the child lived with him and no one contested the father's custody); *Matter of M-*, 3 I&N Dec. 850, 856 (BIA 1950) (father had "actual uncontested custody" of a child where the father lived with the child, took care of the child, and the mother consented to his custody). The term "residence" is defined in the Act as a person's, "[p]lace 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). The residence requirement "implies that the child resides in a home established by the adopting parent." *Matter of Repuyan* at 120-21.

The record contains sufficient evidence to demonstrate that the Applicant has resided with his adoptive U.S. citizen mother and father in Taiwan since [REDACTED] 2010. Although 2011 and 2013 federal income tax return evidence in the record states that the Applicant's adoptive parents' address is in [REDACTED] Florida, the Applicant's adoptive parents explain in affidavits that they used the Applicant's adoptive paternal grandmother's address in the United States for tax filing purposes in order to have a reliable address for Internal Revenue Service correspondence. The Applicant's adoptive parents indicate further that they have lived and worked in Taiwan since July 2005, the Applicant moved into their home in [REDACTED] 2010, and they have cared for the Applicant full time since [REDACTED] 2010. An affidavit from the Applicant's adoptive paternal grandmother states similarly that the Applicant's adoptive parents do not live with her. Affidavits from the Applicant's adoptive siblings, and from friends and family, also attest to personal knowledge of the Applicant's residence with his adoptive mother and father in Taiwan since [REDACTED] 2010. Medical and pre-school-related evidence for the Applicant indicates further that the Applicant's adoptive parents have been responsible for the Applicant's care and education since [REDACTED] 2010 and that he resides with their family in Taiwan. The Applicant's [REDACTED] 2011, final adoption decree evidence also reflects

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<sup>1</sup> Department of State guidance reflects that additional adoption requirements were added as of April 1, 2013. Here the Applicant's adoption took place in 2011, before additional requirements were implemented.

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that the Applicant lives with his adoptive parents in Taiwan. In addition, evidence from the Applicant's adoptive mother and father's employer in Taiwan reflects that the Applicant's adoptive parents began working and living in employment-provided housing in Taiwan in July 2005, and that the Applicant has lived with them since [REDACTED] 2010. Upon review, the Applicant has sufficiently demonstrated that he has resided in Taiwan in the physical custody of his U.S. citizen adoptive mother for over 5 years, since [REDACTED] 2010. The Applicant therefore meets the physical custody requirement contained in § 322(a)(4) of the Act.

B. Temporary presence of the Applicant in the United States pursuant to a lawful admission, and maintenance of such lawful status

Section 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 adoptive mother are in Taiwan. This matter will therefore be returned to the Director to schedule an interview on the Applicant's Form N-600K application.

### III. CONCLUSION

In light of the above, the Applicant has demonstrated that he resided outside of the United States in the legal and physical custody of his adoptive mother for at least 2 years, and that he satisfies the conditions contained in section 322 of the Act. Accordingly, the Applicant has established eligibility for issuance of a Certificate of Citizenship pursuant to section 322 of the Act.

It is the Applicant's burden to establish the claimed citizenship by a preponderance of the evidence. Section 341(a) of the Act, 8 U.S.C. § 1452(a); 8 C.F.R. § 341.2(c). The Applicant has met that burden. Accordingly, we sustain the appeal. The matter is returned to the Director, Atlanta, Georgia, Field Office to schedule an interview on the application.

**ORDER:** The appeal is sustained.

Cite as *Matter of T-V-D-*, ID# 16110 (AAO Apr. 28, 2016)