



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

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

MATTER OF O-H-G-

DATE: JAN. 29, 2016

APPEAL OF HOUSTON FIELD OFFICE DECISION

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

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

The record reflects that the Applicant was born in Canada on [REDACTED]. The Applicant's parents were born in the United States. The Applicant seeks a certificate of citizenship pursuant to section 322 of the Act, claiming U.S. citizenship through his U.S. citizen mother. On April 17, 2015, the Director denied the application finding that the Applicant did not timely provide the requested evidence of his mother's physical presence in the United States.

On appeal, the Applicant submits, through his mother, a copy of the Applicant's father's birth certificate, as evidence the father was born in the United States, and additional documents relating to her physical presence in the United States prior the Applicant's birth.

The record includes, but is not limited to, the documents listed above, birth and marriage certificates, copies of Form W-2, Wage and Tax Statement, and copies of the U.S. federal tax returns filed by the Applicant's parents. The entire record was reviewed and considered in rendering this decision on appeal.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

As amended by the Child Citizenship Act (CCA) of 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 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.

The Applicant has established that he satisfies several requirements for acquisition of U.S. citizenship under section 322 of the Act. The record contains copies of the birth certificates of the Applicant's mother and father showing that they were born in the United States. In addition, the Applicant meets the age limit requirement of section 322 of the Act, as his birth certificate shows that he was born in [REDACTED] and is under the age of 18 at this time. Further, the Applicant has submitted sufficient evidence to show that his mother was physically present in the United States prior to his birth for at least five years, two of which were after she attained the age of 14. This evidence includes a copy of the marriage certificate of the Applicant's parents, which shows that they were married in Texas in 2006. In addition, the Applicant submitted W-2 Form, Wage and Tax Statement, issued to the Applicant's mother in 2012, on which her reported address is in Texas. Similarly, copies of the U.S. income tax returns jointly filed by the Applicant's parents between 2007 and 2012 reflect that they resided in Texas during this time period. These documents establish that the Applicant's mother was physically present in the United States between 2006 and 2012, after she turned 14 years of age. Accordingly, the evidence submitted on appeal overcomes the reason for the denial of the Applicant's Form N-600K.

Moreover, the record contains sufficient evidence to show that the Applicant was residing outside of the United States in the legal and physical custody of his U.S. citizen mother, as this term is defined in 8 C.F.R. § 322.1, at the time that the Form N-600K was filed.

However, the record does not establish at this time that the Applicant is temporarily present in the United States pursuant to a lawful admission and maintaining such lawful status, as required by section 322(a)(5) of the Act. The Form I-290B, Notice of Appeal or Motion, reflects that the Applicant's mother filed the Form I-290B from an address in Texas. The record does not contain evidence on where the Applicant presently resides, and if he resides with his mother in the United States, whether he is temporarily present in the United States pursuant to a lawful admission and is maintaining such status.¹

The Applicant has not shown, therefore, that he is presently eligible for issuance of certificate of citizenship pursuant to section 322 of the Act.

We note that the Applicant may be eligible for issuance of certificate of citizenship under section 301(c) of the Act, 8 U.S.C. § 1401(c), which provides that the following shall be nationals and citizens of the United States at birth:

a person born outside of the United States and its outlying possessions of parents both of whom are citizens of the United States and one of whom has had a residence in the United States or one of its outlying possessions, prior to the birth of such person....

The record reflects that the Applicant was born in Canada to two U.S. citizen parents and that the Applicant's mother has had a residence in the United States prior to the Applicant's birth. Accordingly, it appears that the Applicant may have acquired citizenship at birth pursuant to the provisions of section 301(c) 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 not met the burden of proving eligibility for a certificate of citizenship under section 322 of the Act. The Applicant's appeal will therefore be dismissed.

The dismissal is without prejudice to filing of Form N-600, Application for Certificate of Citizenship, with the U.S. Citizenship and Immigration Services, if the Applicant is in the United States. *See* section 103(a)(1) of the Act, 8 U.S.C. § 1103. If the Applicant resides overseas, he should submit his claim of U.S. citizenship to the U.S. Department of State. *See* section 104(a)(1) of the Act, 8 U.S.C. § 1104.

ORDER: The appeal is dismissed.

Cite as *Matter of O-H-G-*, ID# 14681 (AAO Jan. 29, 2016)

¹ We note that if applicants are outside the United States when a Form N600K is granted, an applicant must obtain a nonimmigrant visa and admission into the United States to fulfill the requirements of section 322(b) of the Act.