



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

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

MATTER OF X-H-

DATE: DEC. 12, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Applicant's father, a citizen of the United States, seeks a Certificate of Citizenship on behalf of the Applicant, who was born in China in [REDACTED]. See Immigration and Nationality Act (the Act) section 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 of the United States if the child is residing in that parent's legal and physical custody, and the parent, or the parent's U.S. citizen parent (the child's grandparent), had been physically present in the United States for 5 years, 2 of which were after the parent turned 14 years old. U.S. Citizenship and Immigration Services (USCIS) will issue a Certificate of Citizenship to a child who meets the above eligibility criteria, provided that the child is under the age of 18 years.

The Director of the Boston, Massachusetts, Field Office denied the application concluding that the record did not establish, as required, that the Applicant resided outside of the United States in the legal and physical custody of her U.S. citizen father. The Applicant's father appealed the Director's decision to our office, asserting that although he resided in the United States he maintained legal and physical custody of the Applicant who resided in China and attended school there. We dismissed the appeal finding that the Applicant did not meet the eligibility criteria for issuance of a Certificate of Citizenship pursuant to section 322 of the Act, because she did not reside outside of the United States with her father and, therefore, did not satisfy the physical custody requirement.

On a motion to reopen and a motion to reconsider, the Applicant's father asserts that our decision was in error and states that he met the physical custody condition in section 322(a)(4) of the Act despite his residence in the United States during the Applicant's school attendance in China. He further claims that, in the alternative, he satisfies the physical custody now because after we issued the decision the Applicant has been admitted to the United States as a lawful permanent resident and is residing with him in the United States.

Upon review, we will deny the motion to reopen and the motion to reconsider, as the Applicant now introduces new facts into the record that would warrant the continued denial of her application even if she had been able to overcome our reasons for dismissing her appeal.

I. LAW

The record reflects that the Applicant was born to unmarried parents in China in [REDACTED]. Her father became a U.S. citizen through naturalization in 2005, when the Applicant was [REDACTED] years old. In [REDACTED] 2016, a court in China awarded legal and physical custody to the Applicant's father. A few months later, when the Applicant was over [REDACTED] years old, her father filed the instant Form N-600K seeking a Certificate of Citizenship on her behalf pursuant to section 322 of the Act. In [REDACTED] 2017, a month before the Applicant's [REDACTED] birthday, she was admitted to the United States as a lawful permanent resident based on an approved immigrant visa petition her father filed on her behalf.

As discussed in our previous decision, section 322 of the Act applies to children of U.S. citizens born and residing outside of the United States and 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. The [Secretary of Homeland Security] 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.

(A) The United States citizen parent--

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. . . .

Section 322 of the Act (emphasis added).

II. ANALYSIS

As stated above, USCIS will issue a Certificate of Citizenship to a child who is regularly residing abroad in the U.S. citizen parent's legal and physical custody, if the parent meets certain physical presence requirements and the child is temporarily present in the United States pursuant to a lawful admission. However, a child who satisfies these conditions must be under 18 years old to receive a Certificate of Citizenship. Section 322(a)(3) of the Act.

We have previously determined that the Applicant was not eligible for a Certificate of Citizenship pursuant to section 322 of the Act because she resided in China while her father resided in the United States, and for that reason she did not meet the physical custody requirement in section 322(a)(4) of the Act. Following the Applicant's admission to the United States for permanent residence, her father filed the instant motions asserting that this determination was incorrect, in part, because the Applicant is now residing in his custody in the United States. A week after the motions were filed, in [REDACTED] 2017, the Applicant turned [REDACTED] years of age.

The Applicant does not demonstrate on motion that her application is approvable. To the contrary, now that she is over the age of 18, she does not meet the age limit set forth in section 322(a)(3) of the Act. Moreover, as the Applicant is now residing *in the United States* with her father, she no longer satisfies the requirement of residing *outside of the United States* in his custody under section 322(a)(4) of the Act. Because the Applicant is ineligible for a Certificate of Citizenship for these reasons, we do not reach the merits of the father's claims and arguments in support of the motions.

While we must deny the motions based on the Applicant's ineligibility for a Certificate of Citizenship under section 322 of the Act, we observe that the Applicant may be eligible for issuance of a Certificate pursuant to section 320 of the Act, 8 U.S.C. § 1431. That section provides that a child of a U.S. citizen parent, who is residing in that parent's legal and physical custody in the United States as a lawful permanent resident before his or her 18th birthday, will *automatically* derive U.S. citizenship. As stated above, the record reflects that the Applicant was admitted to the United States as a lawful permanent resident when she was under the age of 18 years, and her U.S. citizen father states that she has been residing in his legal and physical custody in the United States since the admission.

To claim eligibility for issuance of a Certificate of Citizenship pursuant to the provisions of section 320 of the Act, the Applicant may file Form N-600, Application for Certificate of Citizenship with USCIS, if the Applicant is in the United States. Section 103(a)(1) of the Act, 8 U.S.C. § 1103. If the Applicant is residing overseas, she should make a claim of U.S. citizenship before the U.S. Department of State. Section 104(a)(1) of the Act, 8 U.S.C. § 1104.

III. CONCLUSION

The Applicant is not eligible for issuance of a Certificate of Citizenship under section 322 of the Act because she is over 18 years old and no longer residing outside of the United States. Accordingly,

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we will deny the motions without prejudice to filing a Form N-600, Application for Certificate of Citizenship, to claim eligibility under other citizenship provisions of the Act.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of X-H-*, ID# 673842 (AAO Dec. 12, 2017)