



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

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

In Re: 3349271

Date: SEPT. 06, 2024

Appeal of New York, New York Field Office Decision

Form N-600K, Application for Citizenship and Issuance of Certificate Under Section 322

The Applicant seeks a Certificate of Citizenship under section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The Director of the New York, New York Field Office denied the application, concluding that the record did not establish that the Applicant satisfied the conditions for deriving U.S. citizenship at section 322 of the Act because the Applicant had not responded to a request for evidence (RFE). The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Applicant bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

**I. LAW**

The record reflects that the Applicant was born in Greece in 2017 to a U.S. citizen mother and a foreign national father. A Certificate of Naturalization shows that the Applicant's maternal grandfather became a naturalized U.S. citizen in December 1978. The Applicant indicated on the Form N-600K that he currently resides in Greece with his parents. He claims U.S. citizenship under section 322 of the Act solely through his U.S. citizen mother, which includes her own naturalized U.S. citizen father's periods of U.S. physical presence.

Section 322 of the Act (as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000)), applies to children who were born and reside outside of the United States, and states, 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 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 . . . [and] upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this chapter of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the Attorney General [Secretary] with a certificate of citizenship.

Regulations at 8 C.F.R. § 322.1 provide that for section 322 of the Act purposes, the term “child” means a person who meets the requirements of section 101(c) of the Act; 8 U.S.C. § 1101(c). Section 101(c) of the Act defines the term “child” in pertinent part to mean “an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child’s residence or domicile, or under the law of the father’s residence or domicile, whether in the United States or elsewhere[.]” The child must have either a biological or legal adoptive relationship with the claimed U.S. citizen parent. *See Matter of Guzman-Gomez*, 24 I&N Dec. 824, 826 (BIA 2009).

Because the Applicant was born abroad, he is presumed to be a foreign national and bears the burden of establishing his claim to U.S. citizenship by a preponderance of credible evidence. *See Matter of Baires*, 24 I&N Dec. 467, 468 (BIA 2008). The “preponderance of the evidence” standard requires

the record to demonstrate that the Applicant's claim is "probably true," based on the specific facts of his case. *See Matter of Chawathe*, 25 I&N Dec. at 369.

Here, the Director denied the Form N-600K, concluding that the Applicant did not establish his eligibility for a Certificate of Citizenship under section 322 of the Act because he failed to provide specific requested evidence in response to both a written and an e-mailed RFE requesting evidence of his U.S. citizen grandfather's physical presence in the United States, the grandfather's legal name change or proof that his grandfather used an alias that appeared in evidence in the record, and proof of the Applicant's and his mother's residence from the filing date of the Form N-600K to the present.

On appeal, the Petitioner's mother claims that she had provided evidence in response to the RFE and submits, on his behalf, a copy of an e-mail which appears to reflect that she responded to the RFE with additional evidence in February 2024, prior to the Director's denial in March 2024. As the Director does not appear to have had the opportunity to review the evidence that the Petitioner provides on appeal, and that appears to have provided in response to the RFE, we will remand the matter to the Director to consider it in the first instance in determining whether the Petitioner has established by a preponderance of the evidence that he satisfies the requirements for approval of his Form N-600K and issuance of a Certificate of Citizenship under section 322 of the Act.

**ORDER:** The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.