



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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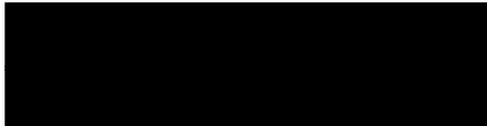
FILE: [Redacted] Office: Miami

Date: 15 AUG 2002

IN RE: Applicant: [Redacted]

APPLICATION: Application for Naturalization under Section 322 of the Immigration and Nationality Act, 8 U.S.C. 1433

IN BEHALF OF APPLICANT:



Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Miami, Florida, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant was born on November 11, 1987, in Brazil. She was adopted on January 9, 1989, by [REDACTED] who acquired U.S. citizenship at birth through his parents, and [REDACTED] who was born in Switzerland and never became a U.S. citizen. The applicant was lawfully admitted for permanent residence on January 20, 1994. The applicant seeks to become a naturalized citizen under section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1433.

The district director reviewed the record and noted that the applicant's adoptive father died on November 18, 1994, and she remained in the custody of her adoptive mother. The application was filed on February 5, 1999, subsequent to the U.S. citizen's death and not by the U.S. citizen parent but by the lawful permanent resident parent. The district director concluded that the applicant had failed to satisfy the requirements of section 322 of the Act and denied the application accordingly.

On appeal, counsel states that the application was filed based on the physical presence of the applicant's grandparents. Accordingly the lack of physical presence of the father is irrelevant.

Section 322 of the Act was amended by the Child Citizenship Act of 2000, Pub.L. No. 106-395, 114 Stat. 1631 (CCA), effective February 27, 2001, and provides benefits only to those persons who had not yet reached their 18th birthday. The applicant was 13 years and 3 months old on February 27, 2001.

Section 322 of the Act effective prior to February 27, 2001, provided, in part, that:

(a) A parent who is a citizen of the United States may apply to the Attorney General for a certificate of citizenship on behalf of a child born outside the United States....

Section 322 of the Act, in effect on February 27, 2001, provides 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 Attorney General shall issue such a certificate of citizenship to such parent upon proof, to the satisfaction of the Attorney General, 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 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 18 years.

(4) The child is residing outside of the United States in the legal and physical custody of the citizen parent, 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 337(a), 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.

(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).

The record clearly reflects that the application was filed by the applicant's mother, who is a lawful permanent resident. The statute requires the parent who files the application to be a United States citizen. The applicant has failed to establish her eligibility for the benefit sought, and the appeal will be dismissed.

This decision is without prejudice to the applicant's seeking U.S. citizenship through normal naturalization procedures.

**ORDER:** The appeal is dismissed.