



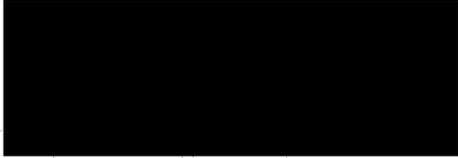
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U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE: [Redacted]

Office: Miami

Date:

03 DEC 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: [Redacted]

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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 sustained.

The applicant was born on October 15, 1994, in the Dominican Republic. The applicant's father, [REDACTED] was born in the Dominican Republic in January 1962 and never had a claim to U.S. citizenship. The applicant's mother, [REDACTED] was born in Puerto Rico in May 1965. The applicant's parents married each other on July 6, 1989. The applicant was lawfully admitted for permanent residence on November 3, 1995.

The applicant's grandfather, [REDACTED] was born in the Dominican Republic in July 1936 and became a naturalized U.S. citizen in December 1969. The applicant's grandfather was physically present in the United States (according to the application) from 1961 to 1978. The applicant seeks a certificate of citizenship under section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The district director reviewed the record and concluded that the applicant had failed to establish his grandfather had satisfied the physical presence requirements prior to the applicant's 18th birthday. The district director denied the application accordingly.

On appeal, the applicant's mother states that there is little written evidence (of her father's physical presence in the United States) because it was more than 20 years ago.

On appeal, the applicant's mother submitted several letters from the firm Capacete Marting & Associates of San Juan, Puerto Rico relating to the applicant's grandfather, [REDACTED]. The firm's HR & Administration Manager states that [REDACTED] worked for the firm as a structural engineer from April 16, 1969, to October 20, 1977, and that he resided at [REDACTED] Guayanabo, Puerto Rico.

Section 322 of the Act 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 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 custody 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 reflects that the applicant's grandfather naturalized in December 1969. In order for the grandfather to have qualified for such naturalization under section 316 of the Act, 8 U.S.C. § 1427, he must have resided continuously in the United States immediately preceding the date of filing of the application for at least five years, and must have been physically present for at least half of that time. Therefore, it must be presumed that the applicant's grandfather was physically present for at least two and one-half years as of December 1969.

Other documentation places the grandfather in the United States (Guayanabo, Puerto Rico) from 1963 until late 1977 or early 1978, when the family moved to the Dominican Republic. This period from 1963 to 1969 encompasses the period of time necessary for naturalization purposes. Employment letters from CMA place the grandfather in Puerto Rico from April 1969 to October 1977. A 1977 income tax return, Sears charge receipt and Citibank account print out reflect a 1977 Puerto Rican address. Additional evidence is present on CMA correspondence dated from May 1974 through November

1977 containing the grandfather's name, with the final letter acknowledging his resignation from CMA effective November 30, 1977, after nine professional years of employment.

8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. In Matter of E-M-, 20 I&N Dec. 77 (Comm. 1989), it was held that, generally, when something is to be established by a preponderance of evidence, it is sufficient that the proof only establish that it is probably true.

After reviewing the documentation in the record, it is concluded that the applicant has established that his grandfather met the physical presence requirements of section 322 of the Act, and the appeal will be sustained.

ORDER: The appeal is sustained. The district director's decision is withdrawn, and the application is approved.