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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services



FILE: [REDACTED] Office: PORTLAND, MAINE Date: **OCT 22 2004**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Section 322 of the Immigration and Nationality Act; 8 U.S.C. § 1433.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Portland, Maine, and has now been certified to the Administrative Appeals Office (AAO) for review. The district director's decision will be affirmed.

The record reflects that the applicant was born on February 25, 1956, in Canada. The applicant's mother was born in Portage Lake, Maine on October 13, 1923, and she is a United States (U.S.) citizen. The applicant's mother moved to Canada in 1924, and she has resided in Canada for most of her life. The applicant's father was not a U.S. citizen. The applicant's parents married in Canada in October 1946. The applicant seeks a certificate of citizenship pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The district director determined that because the applicant was not in the United States, the Secretary of State, rather than United States Citizenship and Immigration Services (CIS), had jurisdiction over the determination of the applicant's claim to U.S. citizenship. The certificate of citizenship application was denied accordingly.

Section 341(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1452, provides that a person who claims to have derived U.S. citizenship through a qualifying relative may apply to the Attorney General (now, Secretary, Department of Homeland Security) for a certificate of citizenship, and that a certificate may be furnished by the Attorney General if such individual is at the time within the United States.¹

The AAO notes that although section 341(a) of the Act does not actually require an applicant for citizenship to reside in, or to be physically in the United States when the application for a certificate of citizenship is filed, the section does require that the applicant be physically present in the U.S. when she or he receives the certificate of citizenship. Moreover, the AAO notes that in order to obtain derivative citizenship under section 322 of the Act, the applicant must establish lawful admission into, and lawful physical presence in, the United States.

¹ Specifically, section 341(a) states that:

a) A person who claims to have derived United States citizenship through the naturalization of a parent or through the naturalization or citizenship of a husband, or who is a citizen of the United States by virtue of the provisions of section 1993 of the United States Revised Statutes, or of section 1993 of the United States Revised Statutes, as amended by section 1 of the Act of May 24, 1934 (48 Stat. 797), or who is a citizen of the United States by virtue of the provisions of subsection (c), (d), (e), (g), or (i) of section 201 of the Nationality Act of 1940, as amended (54 Stat. 1138; 8 U.S.C. 601), or of the Act of May 7, 1934 (48 Stat. 667), or of paragraph (c), (d), (e), or (g) of section 301 of this title, or under the provisions of the Act of August 4, 1937 (50 Stat. 558), or under the provisions of section 203 or 205 of the Nationality Act of 1940 (54 Stat. 1139; 8 U.S.C. 603, 605), or under the provisions of section 303 of this title, may apply to the Attorney General for a certificate of citizenship. Upon proof to the satisfaction of the Attorney General that the applicant is a citizen, and that the applicant's alleged citizenship was derived as claimed, or acquired, as the case may be, and upon taking and subscribing before a member of the Service within the United States to the oath of allegiance required by this Act of an applicant for naturalization, such individual shall be furnished by the Attorney General with a certificate of citizenship, but only if such individual is at the time within the United States.

Section 322 of the Act 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 Attorney General [now Secretary, Homeland Security, "Secretary"] shall issue a certificate of citizenship to such applicant upon proof, to the satisfaction of the Attorney General [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 applicant

(5) The child is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.

The present record contains no evidence that the applicant is temporarily present in the United States pursuant to a lawful admission. The applicant is therefore not eligible for consideration under section 322 of the Act. The issue of whether the applicant's maternal grandmother meets section 322(a)(2)(B) U.S. residence requirements therefore need not be addressed.

As noted in the district director's decision, section 104(a)(3) of the Act states that, "[t]he Secretary of State shall be charged with the administration and the enforcement provisions of this Act and all other immigration and nationality laws relating to . . . the determination of nationality of a person not in the United States.

Although the Secretary of State (Department of State) does not have authority to issue a certificate of citizenship to the applicant, 22 C.F.R. § 50.2 provides that the Department may "[d]etermine claims to United States nationality when made by persons abroad on the basis of an application for registration, for a passport, or for a Consular Report of Birth Abroad of a Citizen of the United States of America."

“A person abroad who claims U.S. nationality, or a representative on his behalf, may apply at a consular post for registration to establish his claim to U.S. nationality or to make his residence in the particular consular area a matter of record.” *See* 22 C.F.R. § 50.3(a).

The AAO notes that, “[r]egistration creates an official record of U.S. nationality, which in turn enables consular and diplomatic officers to furnish all appropriate citizen services.” *See* Volume 7, Foreign Affairs Manual (7 FAM) section 1411(b). The AAO notes further that in *Matter of Villanueva*, 19 I&N, Dec. 101 (BIA 1984), the Board of Immigration Appeals (the Board) held that unless void on its face a valid United States passport issued to an individual as a citizen of the United States constitutes conclusive proof of such person’s United States citizenship.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant has failed to establish that he is present in the U.S. or that he meets the temporary presence requirements for a certificate of citizenship under section 322 of the Act. Accordingly, the district director’s decision will be affirmed.

ORDER: The district director’s decision is affirmed.