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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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EA

FILE: [REDACTED] Office: BUFFALO, NEW YORK Date: JUN 16 2005

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.

For 
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Buffalo, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on June 19, 1985, in Canada. The applicant's mother [REDACTED] was born in England on October 31, 1944, and she is a United States citizen. The applicant's father [REDACTED] was born in Peru and he is not a U.S. citizen. The applicant's parents married in Canada on August 21, 1984. 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 the applicant was not eligible for U.S. citizenship under section 322 of the Act because he had failed to file his Form N-600, Application for Certificate of Citizenship (N-600 application) or to take the required oath prior to turning eighteen. The district director found further that, although the applicant had established that his mother was physically present in the United States for approximately twelve years prior to the applicant's birth, he had failed to establish that at least five years of U.S. physical presence occurred after his mother turned fourteen, as required by section 301(a)(7) of the former Immigration and Naturalization (the former Act), 8 U.S.C. § 1401(a)(7) (now known as section 301(g) of the Act). The application was denied accordingly.

On appeal, the applicant asserts through his mother that, although his N-600 application contained errors that required resubmission and refilling of his application, he was nevertheless under the age of eighteen at the time that his initial N-600 application was filed. The applicant indicates that he should therefore be entitled to citizenship. The applicant does not contest or otherwise address the district director's findings regarding his mother's U.S. physical presence for section 301(a)(7) of the former Act purposes.

The AAO finds that the applicant failed to identify any erroneous conclusion of law or statement of fact relating to the district director's citizenship eligibility determinations under section 301(a)(7) of the former Act. Accordingly, the AAO will not address the applicant's eligibility for citizenship pursuant to section 301(a)(7) of the former Act. *See generally*, 8 C.F.R. § 103.3(a)(v).

The AAO finds further that the requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and that U.S. Citizenship and Immigration Services (CIS) lacks authority to issue a certificate of citizenship when an applicant fails to meet the relevant statutory provisions set forth in the Act. *See Iddir v. INS*, 301 F.3d 492 (7th Cir. 2002). Accordingly, the AAO finds that the applicant's eligibility for citizenship is not affected or changed by processing delays, and that in order to obtain a certificate of citizenship, the applicant must establish that he fully meets section 322 of the Act requirements.

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.

(b) Upon approval of the application (which may be filed from abroad) and . . . 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 [Secretary] with a certificate of citizenship.

The record reflects that the applicant turned eighteen on June 18, 2003, prior to U.S. Citizenship and Immigration Services (CIS) adjudication or approval of his N-600 citizenship application. The applicant therefore does not meet the statutory requirements for citizenship as set forth in section 322 of the Act.

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 not met his burden in the present matter and the appeal will be dismissed.

ORDER: The appeal is dismissed.