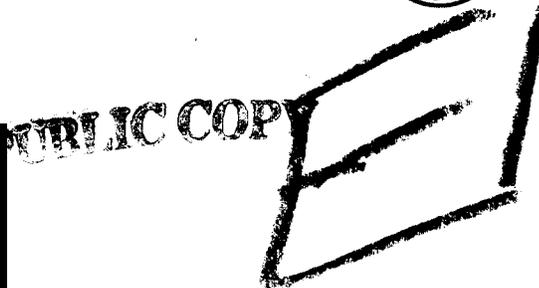


Identify... to
prevent... grants
invasion of personal privacy



U.S. Citizenship
and Immigration
Services



MAY 06 2005

FILE: [Redacted] Office: ATLANTA, GA (CHARLOTTE, NC) Date:

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Atlanta, Georgia (Charlotte, North Carolina), and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Korea on February 20, 1988. The applicant was adopted in North Carolina by a U.S. citizen [REDACTED] on November 30, 2001. [REDACTED] filed a Form N-643, Application for Certificate of Citizenship on Behalf of An Adopted Child by U.S. Citizen Adoptive Parents (N-643 Application) on February 28, 2003. The applicant presently 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 ineligible for citizenship under section 322 of the Act because she was not temporarily present in the United States pursuant to a lawful admission and maintaining such lawful status, and because she did not reside outside of the United States in the legal and physical custody of her U.S. citizen parent, as required by sections 322(a)(4) and (5) of the Act. The application was denied accordingly.

On appeal, the applicant, through her adoptive father, asserts that she was in lawful nonimmigrant visitor status for many months after her N-643 was filed with U.S. Citizenship and Immigration Services (CIS). The applicant indicates that CIS unreasonably delayed the processing of her N-643 application until after her nonimmigrant status had expired, and that she should therefore be entitled to citizenship under section 322 of the Act. The applicant makes no assertions regarding the district director's additional determination that she had failed to establish she resided outside of the United States in the legal and physical custody of her U.S. citizen parent.

The AAO notes that its appellate jurisdiction is limited, and that the AAO has no jurisdiction over unreasonable delay claims arising under the Act or pursuant to constitutional due process claims. *See generally*, 8 C.F.R. § 103.1(f)(3)(iii) (2003) and 8 C.F.R. § 2.1 (2004). *See also generally*, [REDACTED] 607 F.Supp. 517 (U.S. Dist.Ct. Or. 1985) (discussing federal court jurisdiction over such claims). Moreover, the AAO finds that the requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and that CIS lacks statutory authority to issue a certificate of citizenship when an applicant fails to meet the relevant statutory provisions set forth in the Act. *See generally*, *Iddir v. INS*, 301 F.3d 492 (7th Cir. 2002). The AAO therefore finds that the applicant's eligibility for citizenship under section 322 provisions is not affected or changed by CIS processing delays, and that in order to obtain a certificate of citizenship, the applicant must establish that she fully meets section 322 of the Act requirements.

Section 322 of the Act applies to children born and residing outside of the United States. The section 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 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).

Section 101(b)(1) of the Act, 8 U.S.C. § 1101(b)(1), states in pertinent part that:

(b)(1) The term “child” means an unmarried person under twenty-one years of age who is –

.....
(E) (i) a child adopted while under the age of sixteen years

The applicant in the present matter was adopted on November 30, 2001, when she was twelve-years-old. She therefore meets the definition of “child” as set forth in the Act.

The record reflects that the applicant was last admitted into the United States as a nonimmigrant visitor on October 31, 2002. Her nonimmigrant visitor status expired on April 29, 2003, and there is no evidence in the record to indicate that the applicant is currently temporarily present in the United States pursuant to a lawful admission. Accordingly, the AAO finds that the applicant has failed to meet the requirements set forth in section 322(a)(5) of the Act.

The applicant has additionally failed to establish that she resides outside of the U.S. in the legal and physical custody of her U.S. citizen father. Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33), defines the term “residence” as, “[t]he place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent.” In the present matter, school, church, and medical evidence, as well as [REDACTED] statements on appeal, reflect that the applicant has resided in the United States with her adoptive father since July 24, 2001. Because the applicant has failed to establish that she is

temporarily present in the United States pursuant to a lawful admission and that she resides outside of the United States in the legal and physical custody of her U.S. citizen adoptive father, she is ineligible for citizenship pursuant to section 322 of the Act.

The AAO notes that Section 320 of the Act, 8 U.S.C. § 1431, permits a child who was born outside of the U.S. but resides in this country to become a U.S. citizen upon fulfillment of the following conditions:

- (a)
 - (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
 - (2) The child is under the age of eighteen years.
 - (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.
- (b) Subsection (a) 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 father filed a Form I-130, Petition for Alien Relative and Form I-485, Application to Register Permanent Residence or Adjust Status, on the applicant's behalf in May 2004. However, the record contains no evidence to indicate that the applicant has obtained lawful permanent resident status in the United States. The applicant therefore does not meet the requirements for U.S. citizenship as set forth in section 320 of the Act.

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. The applicant has failed to meet her burden. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed. ¹

¹ The AAO notes that the present decision is without prejudice to the applicant's filing a new citizenship application pursuant to section 320 of the Act, if she becomes eligible.