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U.S. Citizenship
and Immigration
Services

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FILE:

Office: SPOKANE, WASHINGTON

Date: MAY 17 2005

IN RE:

Applicant:

APPLICATION:

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

ON BEHALF OF APPLICANT:

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, Spokane, Washington 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 August 13, 1986 in Mexico. The applicant's father was also born in Mexico, but he is a U.S. citizen, having derived U.S. citizenship from the applicant's grandfather. The applicant's mother is not a U.S. citizen. The applicant resides in Mexico in the custody of her U.S. citizen father. The applicant's parents are married. The applicant seeks a certificate of citizenship pursuant to § 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The district director concluded that the applicant was statutorily ineligible for a certificate of citizenship under § 322 of the former Act because she turned eighteen years old prior to final adjudication of her application. The application was denied accordingly. The district director noted that the applicant failed to appear for her interview on July 29, 2004, and she also failed to respond to two attempts to contact her by telephone.

On appeal, counsel indicates that the applicant did not receive the interview notice. Counsel also states that the applicant made several attempts to contact Citizenship and Immigration Services (CIS) in order to follow up on her application. Counsel asserts that the applicant's failure to appear should thus be excused, and her application should be adjudicated in her favor.

The AAO notes that the Child Citizenship Act of 2000 (CCA), which took effect on February 27, 2001, amended sections 320 and 322 of the Act. The provisions of the CCA apply to persons such as the applicant who were not yet eighteen-years-old as of February 27, 2001. Section 322 of the Act applies to children living outside the United States.

Section 322 of the Act provides, in pertinent part:

(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 a certificate of citizenship to such applicant upon proof, to the satisfaction of the Attorney General, that the following conditions have been fulfilled:

(1) At least one parent (or, at the time of his or her death, was) is a citizen of the United States, whether by birth or naturalization.

(2) The United States citizen parent--

(A) has (or, at the time of his or her death, had) 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 (or, at the time of his or her death, had) 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 (or, if the citizen parent is deceased, an individual who does not object to the application).

(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, 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.

The AAO notes that the requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and that 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 generally, Iddir v. INS*, 301 F.3d 492 (7th Cir. 2002). The AAO therefore finds that the applicant's eligibility for citizenship under § 322 of the Act is not affected by CIS processing delays, and that in order to obtain a certificate of citizenship, the applicant must establish that she fully meets § 322 of the Act requirements. The applicant failed to establish that her citizenship application was approved by CIS prior to her eighteenth birthday; hence, she has not fulfilled the third provision of § 322, as described above. The AAO notes that the present decision is without prejudice to the applicant's father's filing a Form I-130 Petition for Alien Relative on behalf of the applicant.

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 not met her burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.