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**U.S. Citizenship  
and Immigration  
Services**

EI



FILE: [Redacted]

Office: NEW YORK, NY

Date: **OCT 26 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.

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, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The Form N-600K, Application for Citizenship and Issuance of Certificate under Section 322 (N-600 Application) reflects that the applicant was born in Ethiopia on August 31, 1986, and that she is presently nineteen years old. The record indicates that the applicant was adopted in Ethiopia by [REDACTED] on December 4, 2003, when she was sixteen years old. The applicant's adoptive mother is a naturalized U.S. citizen. 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 concluded the applicant had failed to establish that she resides in the physical custody of her U.S. citizen parent as required by section 322 of the Act. The application was denied accordingly.

On appeal the applicant's mother concedes that the applicant resides outside of the U.S. with her maternal grandparents, and that she (the applicant's mother) resides in the United States. The applicant's mother asserts, however, that a court order allows her to raise the applicant, and she requests that the applicant be given an opportunity to reside with her in the United States.

Section 322 of the Act applies to children born and residing outside of the United States and states, 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, Department of 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.

A review of the record reflects that the applicant has at no time resided abroad in the physical custody of her mother. To the contrary, the record reflects that the applicant's U.S. citizen mother resides in New York, and that the applicant has resided with her maternal grandparents in Ethiopia since the time of her adoption. The applicant has therefore failed to establish that she has resided outside of the United States in the physical custody of her U.S. citizen parent. Accordingly, the applicant does not qualify for citizenship under 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. *See also* § 341 of the Act, 8 U.S.C. § 1452. The applicant has not met her burden. The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.