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U.S. Citizenship
and Immigration
Services

EI

FILE:

Office: SEATTLE, WA

Date: **OCT 26 2005**

IN RE:

Applicant:

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. Wieman, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Seattle, 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 in Canada on February 8, 1997. The applicant's father, [REDACTED] was born in Stockton, California and he is a U.S. citizen. The applicant's mother was born in Canada and she is not a U.S. citizen. The applicant's parents married in Canada on July 9, 1994. 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 that the applicant was ineligible for citizenship under section 322 of the Act, because he failed to establish that he resides outside of the United States in the physical custody of his U.S. citizen parent, as required by section 322 of the Act. The application was denied accordingly.

On appeal, the applicant asserts through his father that, although he and his family live temporarily in the United States, their official permanent residence is in Kelowna, BC, Canada.

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.

Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33), reflects that for immigration purposes, “[t]he term “residence” means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent.” The Board of Immigration Appeals clarified in, *Matter of Jalil*, 19 I&N Dec. 679 (BIA 1988), that the maintenance of financial interests, the retention of a house, or the intention to return does not establish a person’s “dwelling place in fact” for purposes of section 101(a)(33) of the Act.

The record reflects that the applicant lives with his U.S. citizen parent and family in Washington, and that the state of Washington is the applicant’s “actual principal dwelling place in fact”. The AAO therefore finds that the applicant does not meet the section 322 of the Act requirement that he reside outside of the U.S. in the physical custody of his U.S. citizen parent. Because the applicant has failed to establish that he meets the foreign residence requirement, the AAO finds it unnecessary to address whether the applicant meets the remaining requirements set forth in section 322 of the Act.

The AAO notes further that the applicant has also failed to establish he qualifies for a certificate of citizenship pursuant to section 301(g) of the Act, 8 U.S.C. § 1401(g).

“The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child’s birth.” *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9th Cir. 2000) (citations omitted). The applicant was born in Canada in February 1997. Section 301(g) of the Act, therefore applies to his derivative citizenship claim.

Section 301(g) of the Act, 8 U.S.C. § 1401, states in pertinent part, that the following shall be citizens of the United States at birth:

(g) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was 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

The record reflects that the applicant’s U.S. citizen father left the United States in 1975, when he was two or three years old, and that he did not return to the U.S. until after the applicant’s birth. The applicant’s father thus does not meet the U.S. physical presence requirements set forth in section 301(g) of the Act.

8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. Based on the above evidence, the applicant has failed to establish that he qualifies for a certificate of citizenship. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.