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

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FILE: [REDACTED] Office: PHOENIX, ARIZONA

Date: **SEP 21 2005**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under § 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, Phoenix, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant seeks a certificate of citizenship for his daughter pursuant to § 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433. The applicant's daughter was born in Mexico September 18, 1994. The applicant was also born in Mexico, but he derived U.S. citizenship through his father. The applicant's daughter's mother, whom the applicant never married, is not a U.S. citizen.

The district director concluded the applicant had failed to establish that his daughter resided outside of the United States in his legal and physical custody, as required by § 322 of the Act. The district director also noted that, in the alternative, the applicant had failed to establish that his daughter resided in the United States pursuant to a lawful admission for permanent residence, as required by § 320 of the Act; 8 U.S.C. § 1431. The application was denied accordingly.

On appeal, the applicant asserts that his daughter lives with him in Mexico; thus, she qualifies for a certificate of citizenship under § 322 of the Act. In support of his claim, the applicant submits six affidavits, including one he executed, attesting to his daughter's residence with him in Mexico. The AAO has reviewed the entire record and concurs with the district director's decision to deny the application.

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, 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.

The evidence in the record reflects that the applicant resides in the United States and that his daughter resides in Mexico. The evidence does not establish the requirement set forth at § 322(a)(4) that the applicant's child reside outside of the U.S. in the physical custody of her U.S. citizen parent. The applicant's statement on appeal that he lives in Mexico with his daughter directly contradicts information he related under oath at the

citizenship interview, at which time he stated that he lives in Arizona, his daughter lives in Mexico, and she visits him in Arizona. In addition, the affidavits submitted on appeal, executed by individuals claiming to be the applicant's neighbors in Mexico, all contain the exact same wording and are not supported by any independent documentation. The AAO notes that doubt cast on any of the evidence on the record may lead to a reevaluation of the reliability and sufficiency of the remaining evidence. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). If Citizenship and Immigration Services (CIS) fails to believe that a fact stated in the application is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). In the case at hand the applicant has failed to resolve the inconsistency regarding his and his daughter's places of residence; hence, he has not established all of the requirements described in § 322 of the Act.

The applicant also does not qualify for citizenship under § 320 of the Act. Section 320 of the Act states in pertinent part that:

- (a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:
 - (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.

The applicant has failed to establish that his daughter resides in the United States in his legal and physical custody, or that she has been admitted into the U.S. pursuant to a lawful admission for permanent residence (as an immigrant visa holder). The applicant's daughter has not met the third provision described above.

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 her burden and the appeal will be dismissed.¹

ORDER: The appeal is dismissed.

¹ As noted in the interim district director's decision, the present AAO decision is also made without prejudice to the U.S. citizen parent filing an Immigrant Visa petition on behalf of the applicant, or to the applicant's filing a new application for a Certificate of Citizenship if she becomes eligible.