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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

EI

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FILE: Office: WASHINGTON, D.C. Date: **JUN 28 2006**

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:

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, Washington, D.C., 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 Germany on July 15, 1988. The applicant's father is not a U.S. citizen. The applicant's mother, who is now deceased, was born in Germany, but she derived U.S. citizenship through her own U.S. citizen father. The applicant's maternal grandfather was born in and lived his entire life in the United States, but he is also now deceased. The applicant's parents were married when she was born, but they divorced, and the applicant is estranged from her father. The applicant's uncle, a U.S. citizen who resides in the United States, has obtained legal custody over the applicant, who entered the United States on March 8, 2005 under the visa waiver program to live with her guardian/uncle. 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 the applicant had failed to establish that she resided outside of the United States, as required by § 322 of the Act. The district director also found that the period the applicant was allowed to remain in the United States pursuant to the visa waiver program expired on June 6, 2005; therefore, the applicant was no longer in valid status, as required by § 320 of the Act; 8 U.S.C. § 1431. The application was denied accordingly.

On appeal, the applicant, through her guardian/uncle, states that her attorney was responsible for the delay in properly filing the Form N-600K Application for a Certificate of Citizenship. No further evidence, such as proof of the applicant's departure from the United States, was submitted on appeal. The AAO has reviewed the entire record and finds that the applicant does not qualify for a certificate citizenship pursuant to § 322 of the Act.

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 (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 finds that the applicant has failed to establish that she resides outside the United States, as required by § 322(a)(4) of the Act. In addition, the evidence does not establish that the applicant is in current valid, nonimmigrant status in the United States, as required by § 322(a)(5) of the Act. The AAO notes that the applicant will turn eighteen years old on July 15, 2006, and in order to qualify for a certificate of citizenship under this section, the application must be approved and the applicant must take the oath of allegiance prior to her eighteenth birthday.

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.

ORDER: The appeal is dismissed.