



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

EL



FILE:



OFFICE: BOSTON, MA (PROVIDENCE, RI)

Date: MAR 24 2006

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. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Boston, Massachusetts, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born on September 28, 1982 in Israel. The record reflects that the applicant's father [REDACTED] was born in Israel, and that he acquired U.S. citizenship at birth through his U.S. citizen father. The applicant's mother is not a U.S. citizen. The applicant 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 determined that the applicant was not eligible for U.S. citizenship under section 322 of the Act because she failed to file her Form N-600, Application for Certificate of Citizenship (N-600 application) or to take the required oath prior to turning eighteen. The district director found that the applicant also failed to establish that her father was physically present in the United States for ten years prior to her birth, at least five years of which occurred after her father turned fourteen, as required by section 301(a)(7) of the former Immigration and Naturalization (the former Act), 8 U.S.C. § 1401(a)(7) (now known as section 301(g) of the Act, 8 U.S.C. § 1401(g)). The application was denied accordingly.

On appeal, the applicant asserts that she did not learn of her U.S. citizenship eligibility until after her eighteenth birthday. The applicant indicates that her younger siblings obtained U.S. citizenship pursuant to section 322 of the Act, and she believes she is also entitled to U.S. citizenship pursuant to section 322 of the Act provisions.

The AAO notes that the requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress. U.S. Citizenship and Immigration Services (CIS) lacks authority to issue a Certificate of Citizenship when an applicant fails to meet all of the statutory provisions set forth in the Act. *Iddir v. INS*, 301 F.3d 492 (7th Cir. 2002). Accordingly, the AAO finds that the applicant must establish she fully meets section 322 of the Act requirements in order to derive U.S. citizenship under its provisions.

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.

(b) Upon approval of the application (which may be filed from abroad) and . . . 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 [Secretary] with a certificate of citizenship.

The record reflects that the applicant turned eighteen on September 28, 2000, prior to the filing of her N-600 application and prior to U.S. Citizenship and Immigration Services (CIS) adjudication of her application. The applicant therefore does not meet the statutory requirements for citizenship as set forth in section 322 of the Act.

“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 on September 28, 1982. Section 301(a)(7) of the former Act is therefore applicable to a U.S. citizenship claim through her father.

Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7) states in pertinent part that:

The following shall be nationals and citizens of the United States at birth: . . . a person born outside the geographical limits of the United States . . . 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 . . . for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years.

The record contains no evidence to establish that the applicant’s father was physically present in the United States for the required time period set forth in section 301(a)(7) of the former Act.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. The applicant has not met her burden in the present matter and the appeal will be dismissed.

ORDER: The appeal is dismissed.