



U.S. Citizenship
and Immigration
Services

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JUN 04 2007

FILE:

Office: BUFFALO, NY

Date:

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, Chief
Administrative Appeals Office

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

The record reflects that the applicant, [REDACTED] was born in China on July 8, 2000. The applicant's parents, as indicated in her birth certificate, are [REDACTED] and [REDACTED]. The applicant's parents were married on March 15, 2000. The applicant's mother is a citizen of China. The applicant's father became a naturalized U.S. citizen on April 21, 2005. The applicant asserts that she is entitled to derive U.S. citizenship through her father.

The district director determined that the applicant had failed to establish that she was residing outside the United States in the legal and physical custody of a U.S. citizen parent. The district director therefore found that she was ineligible for citizenship under section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

On appeal [REDACTED] states "he wants his family to come to the United States." See Form I-290B, Notice of Appeal. The appeal is not accompanied by any additional argument or documentation.

Section 322 of the Act, 8 U.S.C. § 1433, applies to children born and residing outside of the United States, and provides 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 shall issue a certificate of citizenship to such applicant upon proof, to the satisfaction of the Attorney General, 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 [citizen parent] (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.

(c) Subsections (a) and (b) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).¹

In order to satisfy the requirements of section 322(a)(4) of the Act, the applicant must establish that she resides outside of the United States in the legal and physical custody of her U.S. citizen parent. Legal custody vests "by virtue of either a natural right or a court decree." See *Matter of Harris*, 15 I&N Dec. 39 (BIA 1970). The AAO notes that by the applicant's own statements in the Form N-600 Application for Certificate of Citizenship, she currently resides in China with her mother while her father, [REDACTED] currently resides in the United States. Thus, the applicant is residing outside the United States in the custody of her mother, who is not a U.S. citizen. The AAO must conclude that the applicant is not eligible for citizenship under section 322(a)(2)(4) of the Act because she is not residing outside the United States in the physical and legal custody of her U.S. citizen parent.

The applicant has also failed to establish that she satisfies the requirements set forth in section 322(a)(5) of the Act, which state that the child is temporarily present in the U.S. pursuant to a lawful admission, and is maintaining such lawful status. An HQISD 70/33, INS Memorandum by William R. Yates, Deputy Executive Associate Commissioner, INS, entitled *Implementation Instructions for Title I of the Child Citizenship Act of 2000* (February 26, 2001) provides that:

Under section 322 of the Act a foreign-born child who resides outside the United States must be lawfully admitted to the United States and maintain such lawful status until the application for certificate of citizenship is approved and the oath of allegiance administered A child may be admitted in any nonimmigrant classification. A child is considered to have maintained lawful status if his or her nonimmigrant classification has not been revoked or has not expired by operation of law.

The regulation at 8 C.F.R. § 322.4 provides further that, "the U.S. parent and the child shall appear in person before the Service officer for examination on the application for certificate of citizenship." In the present matter, there is no evidence in the record to indicate that the applicant was lawfully admitted into the U.S. at any time, or that she has ever maintained a temporary lawful status in the United States or appeared before an officer for certificate of citizenship examination purposes. The applicant thus failed to meet the requirements

¹ Section 101(b)(1)(E)(i) of the Act, 8 U.S.C. §1101(b)(1)(E)(i) provides that:

As used in titles I and II . . . [t]he term "child" means an unmarried person under twenty-one years of age who is . . . a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years: Provided, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act.

set forth in 8 C.F.R. § 322.4 and section 322(a)(5) of the Act.

The AAO notes, as did the district director, that section 320 of the Act, 8 U.S.C. § 1431, provides 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.

(b) Subsection (a) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

The applicant is under 18 years old. The applicant would likely be eligible for U.S. citizenship under this provision should she, before turning 18, be admitted to the United States as a lawful permanent resident to reside in the legal and physical custody of her father.

The regulation at 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 failed to meet her burden in the present matter. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.