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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE: [Redacted]

Office: Buffalo

Date: JUL 16 2001

IN RE: Applicant: [Redacted]

APPLICATION: Application for Certificate of Citizenship under Section 322 of the Immigration and Nationality Act, 8 U.S.C. 1433

IN BEHALF OF APPLICANT: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Buffalo, New York, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant was born on July 21, 1983, in Canada. The applicant's father, [REDACTED], was born in Canada in 1953 and never became a United States citizen. The applicant's mother, [REDACTED] was born in the United States in 1954 and moved to Canada in 1963 where she has resided since then. The applicant's parents married each other in September 1978.

The applicant's grandfather, [REDACTED] was born in Canada in July 1912 and became a naturalized U.S. citizen on June 23, 1944. On December 3, 1980, the applicant's grandfather reacquired Canadian citizenship by naturalization. On February 13, 1981, the applicant's grandfather performed a voluntary act of expatriation before a consular officer. The applicant is seeking a certificate of citizenship under section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1433.

The district director reviewed the record and concluded that the applicant had failed to establish that his mother fulfilled the physical presence requirement and that his grandfather relinquished his U.S. citizenship and never reacquired such citizenship prior to his death.

As a general rule, all of the laws relating to derivative citizenship require a combination of elements having a simultaneous existence before a son or daughter arrives at a specified age. The sequence in which these elements come into being is immaterial. Determinations involving derivative citizenship are governed by the law in effect when the last material element is completed. See INTERP 320.1(a)(1).

On appeal, the applicant discusses the circumstances under which the applicant's grandfather relinquished his U.S. citizenship.

This application was filed on March 20, 2001. Section 322 of the Act, as in effect since February 27, 2001, provides, in 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 shall issue such a certificate of citizenship to such parent 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 custody and physical custody of the citizen parent, 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.

Unlike children who acquire citizenship through a citizen parent as of the date of their birth, children who are naturalized under section 322 of the Act based on their parent's/grandparent's residence, become citizens upon approval of the application and subscribing to the oath of allegiance (if applicable).

Section 322 of the Act allows a United States citizen parent who is unable to transmit citizenship to a child born abroad to apply for a certificate of citizenship for that child based on the physical presence of the child's U.S. citizen grandparent.

The statute at section 322(a)(2)(B) requires the U.S. citizen parent (the applicant's mother) to have a U.S. citizen parent (the applicant's grandfather) in order for the grandfather's physical presence in the United States to satisfy the statute. The record reflects that the applicant's grandfather was not a U.S. citizen at the time of filing of this application. The applicant's grandfather had expatriated on February 13, 1981. The applicant has failed to establish that his mother had a citizen parent who was a U.S. citizen when this application was filed.

ORDER: The appeal is dismissed.