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U.S. Department of Justice
Immigration and Naturalization Service

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

[REDACTED]

FILE: [REDACTED] Office: Jacksonville (MIA)

Date: - 2 APR 2002

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship in Behalf of an Adopted
Child under Section 341 of the Immigration and Nationality Act,
8 U.S.C. 1452

IN BEHALF OF APPLICANT:

[REDACTED]

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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Miami, Florida, and is now before the Associate Commissioner for Examinations on appeal. The district director's decision will be withdrawn, and the matter will be remanded to him for further consideration and action.

The applicant was born on March 22, 1996, in Russia. The applicant became the beneficiary of an application for advance processing of orphan petition completed on August 13, 1996. He was adopted in Russia on September 26, 1996, [REDACTED]. The applicant seeks 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 provisions of section 322 of the Act, 8 U.S.C. 1433, regarding the acquisition of a certificate of citizenship for an adopted child who was born outside of the United States. The district director concluded that the applicant had not been residing with the adopting parents for at least two years and denied the application accordingly.

On appeal, counsel states that the child is an orphan adopted by U.S. citizens before the age of 16 years, and he was admitted to the United States as a lawful permanent resident. Counsel states that the district director incorrectly treated this case as involving an adopted child as defined in section 101(b)(1)(E) of the Act, 8 U.S.C. 1101(b)(1)(E), and argues that section 101(b)(1)(F) of the Act, 8 U.S.C. 1101(b)(1)(F), pertaining to orphans, imposes no residence requirement.

Section 322 of the Act, effective April 1, 1995, and prior to its amendment by the Child Citizenship Act of 2000, effective on February 27, 2001, provided, in part, that:

(a) A parent who is a citizen of the United States may apply to the Attorney General for a certificate of citizenship on behalf of a child born outside the United States. The Attorney General shall issue such a certificate of citizenship 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 child is physically present in the United States pursuant to a lawful admission.

(3) The child is under the age of 18 years and in the legal custody of the citizen parent.

(4) If the citizen parent is an adoptive parent of the child, the child was adopted by the citizen parent before the child reached the age of 16 years and the child meets the

requirements for being a child under subparagraph (E) or (F) of section 101(b)(1).

(5) If the citizen parent has not been physically present in the United States or its outlying possessions for a period or periods totaling not less than 5 years, at least 2 of which were after attaining the age of 14 years-

(A) The child is residing permanently in the United States with the citizen parent, pursuant to a lawful admission for permanent residence, or

(B) A citizen parent of the citizen parent has been physically present in the United States or its outlying possessions for a period or periods totaling not less than 5 years, at least 2 of which were after attaining the age of 14 years.

(c) Subsection (a) of this section shall apply to the adopted child of a United States citizen adoptive parent if the conditions specified in such subsection have been fulfilled.

Section 322 of the Act, effective April 1, 1995, specifically provided in part (4) that the adopted child must meet the requirements for being a child under subparagraph (E) or (F) of section 101(b)(1).

Subparagraph (E) relates to a child adopted while under the age of 16 years and subparagraph (F) relates to a child classified as an orphan who has been adopted abroad or who is coming to the United States to be adopted.

The record indicates that the applicant was classified as an orphan, adopted in Russia prior to his 16th birthday on September 26, 1996, was lawfully admitted for permanent residence on October 1, 1996, was the beneficiary of an application for certificate of citizenship filed in either October, November or December 1996.

Service guidelines relating to section 322 of the Act in effect on April 1, 1995, provide that an Orphan Child who has lived with and been in the legal custody of the United States citizen adoptive parent for less than two years must be or have been the beneficiary of a approved Form I-600 "Petition to Classify Orphan as an Immediate Relative" in order for the citizen parent to apply for expeditious naturalization of such child. An Orphan Child who has been adopted abroad by a United States citizen parent and who has lived with and been in the legal custody of the adoptive citizen parent for at least two years may be processed as an adopted child.

Counsel submits a copy of a Form I-600A advance processing application on appeal which is not the same as a Form I-600. The present record contains a notice of favorable action on that advance processing application with instructions that a Form I-600 petition must be filed.

The present record fails to contain a copy of the applicant's immigrant visa which should contain the documentation filed at the U.S. Embassy in Moscow. The Associate Commissioner cannot determine from the present record if a Form I-600 petition was properly filed and approved.

Therefore, the district director's decision will be withdrawn, and the matter will be remanded to him for further action and the entry of a new decision. The district director shall examine the applicant's complete Service record and immigrant visa application to determine if a Form I-600 petition was filed in behalf of the applicant and approved. If such a petition is found to have been filed and approved, the district director shall approve the present application because the applicant is not required to have lived with and to have been in the legal custody of the adoptive parent for at least two years.

If the record fails to contain evidence of an approved Form I-600 petition, the district director shall deny the application and certify that decision to the Associate Commissioner with the applicant's complete service record for review.

ORDER: The district director's decision is withdrawn. The matter is remanded to him for further action consistent with the foregoing discussion and entry of a new decision which, if adverse to the applicant, is to be certified to the Associate Commissioner for review.