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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

FILE: [Redacted]

Office: Miami

Date:

AUG 16 2002

IN RE: Applicant:



APPLICATION:

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

IN BEHALF OF APPLICANT:



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 appeal will be dismissed.

The applicant was born on October 24, 1995, in Pakistan. The applicant's adoptive father, [REDACTED] was born in Pakistan in March 1946 and became a naturalized U.S. citizen on October 6, 1994. The applicant's adoptive mother, [REDACTED] was born in Pakistan in July 1952 and became a naturalized United States citizen on August 25, 1999. The applicant's parents married each other on March 22, 1987. The applicant was classified by the consular officer as IR-4 (orphan to be adopted in the United States by a U.S. citizen) and was lawfully admitted for permanent residence on January 22, 1997. The applicant is seeking to become a naturalized citizen under section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1433.

The district director reviewed the record under the provisions of section 320 of the Act, 8 U.S.C. 1431, and concluded that the applicant had failed to establish the adoption had been finalized within the United States. The district director denied the application accordingly.

On appeal, counsel states that the applicant seeks a certificate of citizenship under section 322 of the Act. Counsel states that the applicant's adoption was effectuated and duly executed under the laws of Pakistan and fully recognized in Pakistan.

The record contains a Deed of Adoption issued in Pakistan on October 14, 1996, to [REDACTED] for the purpose of adopting the applicant. That document is partially cut off at the bottom and does not appear to be complete. That document was used to obtain an IR-4 immigrant visa for the applicant as a child to be adopted in the United States by a U.S. citizen and the visa was issued on December 18, 1996.

Section 322 of the Act was amended by the Child Citizenship Act of 2000, Pub.L. No. 106-395, 114 Stat. 1631 (CCA), effective February 27, 2001, and provides benefits only to those persons who had not yet reached their 18th birthday. The applicant was 5 years and 4 months old on February 27, 2001.

Section 322 of the Act 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 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 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 18 years.

(4) The child is residing outside of the United States in the legal 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.

(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).

The record reflects that the applicant is residing in the United States as a lawful permanent resident. Section 322 of the Act requires the applicant to be residing outside the United States and temporarily present in the United States. The applicant has failed to meet the requirements of section 322 of the Act.

Section 320(a) of the Act, effective on February 27, 2001, provides, in part, that a child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have 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 United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b) (1).

Section 101(b) (1) defines the term "child" as an unmarried person under twenty-one years of age who is-:

(E) 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....

If the applicant had been adopted abroad as counsel suggests, the American Embassy would have classified her as an IR-3 immigrant (orphan adopted abroad by a U.S. citizen) and issued her an IR-3 immigrant visa. The applicant was issued an IR-4 immigrant visa as an orphan coming to the United States to be adopted by a U.S. citizen. The record fails to contain an adoption decree showing that such adoption occurred in the United States and is final. Therefore, the appeal will be dismissed.

ORDER: The appeal is dismissed.