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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



AUG 20 2002

FILE: [Redacted] Office: New York Date:

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.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, New York, New York, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be rejected, the district director's decision will be withdrawn, and the matter will be remanded for further action.

The applicant was born on November 12, 1978, in Guyana. The applicant's father, [REDACTED] was born in Guyana in 1958 and never had a claim to U.S. citizenship. The applicant's mother, [REDACTED] was born in Guyana in April 1958 and became a naturalized U.S. citizen on September 27, 1996. The applicant's parents never married each other. The applicant was lawfully admitted for permanent residence on May 25, 1989. The applicant (hereafter referred to as [REDACTED] is seeking to become a naturalized citizen under former section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1433.

The district director reviewed the record more than five years after the application was filed and concluded that [REDACTED] was over the age of 18 years and ineligible for the benefit sought and denied the application accordingly.

On appeal [REDACTED] mother states that she filed a prior application for [REDACTED] at the time of her own naturalization on September 27, 1996, when the [REDACTED] was 17 years and 10 months old. The mother further states that she refiled for [REDACTED] in December 1996. The mother also states that [REDACTED] was able to obtain a U.S. passport [REDACTED] and is a registered voter.

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 22 years and 3 months old on February 27, 2001.

Section 322 of the Act effective prior to February 27, 2001, provides, 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, that 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 five years, at least two of which were after attaining the age of fourteen 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 five years, at least two of which were after the age of fourteen years.

(b) Upon approval of the application (which may be filed 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.

In Matter of Villanueva, 19 I&N Dec. 101 (BIA 1984), the Board held that, unless void on its face, a valid United States passport issued to an individual as a citizen of the United States is not subject to collateral attack in administrative immigration proceedings but constitutes conclusive proof of such person's United States citizenship.

22 U.S.C. 2705 provides that a passport, during its period of validity (if such period is the maximum period authorized by law), issued by the Secretary of State to a citizen of the United States, shall have the same force and effect as proof of United States citizenship as certificates of naturalization or of citizenship issued by the Attorney general or by a court having naturalization jurisdiction.

mother suggests that [REDACTED] has been issued a U.S. passport; however, that evidence is not present in the record for review. mother also makes reference to filing a prior application in behalf [REDACTED]. That evidence is also not present in the record for review. [REDACTED] was still under the age of 18 years when her

mother naturalized and there is an indication on appeal that [REDACTED] was accorded U.S. citizenship and issued a U.S. passport, the appeal will be rejected and the record will be remanded to the district director to request evidence that [REDACTED] has been issued a U.S. passport valid for the maximum period authorized by law, to search for that prior application, and to determine whether [REDACTED] U.S. passport, if submitted, is void on its face or valid. The district director is to enter a new decision based on the presence or absence of documentation submitted by [REDACTED] mother and upon a further search of Service records.

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