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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:

Office: Philadelphia

Date:

MAY 09 2002

IN RE: Applicant:

APPLICATION:

Application for Naturalization 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 which 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 which 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 which 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 Acting District Director, Philadelphia, Pennsylvania, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant was born [REDACTED] on July 6, 1982, in El Salvador to [REDACTED] and an undisclosed father. The applicant was lawfully admitted for permanent residence on April 17, 1990, under the name of [REDACTED] as an orphan to be adopted in the United States. The applicant was adopted on June 24, 1991, by [REDACTED] and [REDACTED] both U.S. citizens, and his name was changed to Carlos [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 acting 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 was over the age of 18 years and denied the application accordingly.

On appeal, the applicant's mother states that she feels the decision was done in error.

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 18 years and 7 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.

(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.

8 C.F.R. 322.2(a) provides that to be eligible for naturalization under section 322 of the Act, a child on whose behalf an application for naturalization has been filed by a parent who is, at the time of filing, a citizen of the United States, must:

(1) Be unmarried and under 18 years of age, both at the time of application and at the time of admission to citizenship;

(2) Reside permanently in the United States, in the physical and legal custody of the applying citizen parent, pursuant to a lawful admission;

(3) Comply with other requirements for naturalization as provided in the Act....

The record reflects that the application was initially received at the Service office on June 16, 2000, but returned to the applicant for the proper fee. The application was received again on July 10, 2000. For immigration purposes, the term "properly filed" means when an application or petition is received at a Service office supported by all necessary documentation and the proper fee.

An alien may acquire citizenship only upon strict compliance with the requirements that Congress has established by statute. INS v. Pangilinan, 486 U.S. 876, 884 (1988). Congress has provided that a citizen parent may apply for a child's naturalization under section 322, 8 U.S.C. 1433(a). Moreover, the child must be under the age of 18 years when all necessary requirements have been satisfied.

8 C.F.R. 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant reached the age of 18 years before all necessary requirements had been satisfied. Therefore, the appeal will be dismissed.

This decision is without prejudice to the applicant's seeking U.S. citizenship through normal naturalization procedures by filing an Application for Naturalization on Form N-400 with a Service office having jurisdiction over his residence.

**ORDER:** The appeal is dismissed.