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U.S. Department of Justice

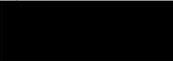
Immigration and Naturalization Service

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

FILE:



Office: Miami

Date:

OCT 29 2002

IN RE: Applicant:



APPLICATION:

Application for Certificate of Citizenship on Behalf of Adopted  
Child 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 Acting 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 March 13, 1985, in Chile. The applicant's adoptive father [REDACTED] was born in the United States in January 1948. The applicant's adoptive mother [REDACTED] was born in [REDACTED] in March 1944. The applicant's adoptive parents married each other on July 19, 1978, and divorced on July 8, 1994. 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 acting district director reviewed the record and the divorce decree which set the applicant's residence at the mother's home. The acting district director concluded that the applicant was not residing in the physical custody of the citizen parent and denied the application accordingly.

The parent's divorce decree states that custody of the applicant will be held jointly by the parents, with the child residing with the mother and the father having visiting rights.

On appeal, the applicant's father states that the custody and residence arrangement for the applicant has changed and will change again pending a hearing requested in the [REDACTED] courts. The applicant's father states that the applicant has lived with him on a permanent basis since February 17, 2001.

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 15 years and 11 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 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.

(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).

Section 322(a)(4) of the act requires the child be residing outside of the United States in the legal custody and physical custody of the citizen parent, be temporarily present in the United States pursuant to a lawful admission, and be maintaining such lawful status.

The record fails to establish that the applicant has satisfied the requirements of section 322(a)(4) of the Act. Therefore, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.