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FILE: [Redacted] Office: LOS ANGELES, CA Date: JUN 09 2004

IN RE: Applicant: [Redacted]

APPLICATION: Application for Certificate of Citizenship.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District [REDACTED] and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born [REDACTED]. The record reflects that the applicant's mother, [REDACTED] was born in [REDACTED] and that she is a U.S. citizen. The applicant's father [REDACTED] was born in Greece and is not a U.S. citizen. The applicant's parents were married in [REDACTED]. The record indicates that the applicant's maternal grandparents [REDACTED]. The applicant seeks a certificate of citizenship pursuant to section 322 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1433.

The district director concluded that the applicant was ineligible for citizenship under section 301 of the former Act, 8 U.S.C. § 1401 because his mother did not meet the U.S. physical presence requirements set forth in that section. The district director found further that the applicant was ineligible for citizenship under section 322 of the former Act because he was over the age of eighteen when he filed his Form N-600, Application for a Certificate of Citizenship (N-600 application). The application was denied accordingly.

On appeal, the applicant, through his mother, asserts that although he failed to file his N-600 application prior to his eighteenth birthday, he was under the age of eighteen when section 322 of the former Act became effective. The applicant asserts that the [REDACTED] did not become aware of new section 322 citizenship provisions until two years after their effective date, and that the Embassy delayed the filing of his N-600 application by failing to inform him of the provisions and subsequently delaying the processing of his N-600 application. The applicant asserts that his U.S. citizen grandparents meet derivative citizenship residence requirements, and that he should not be penalized for the processing delays of the Embassy and the Immigration and Naturalization Service (Service, now, Citizenship and Immigration Services, CIS). The applicant does not dispute or address the district director's finding that he is ineligible for a certificate of citizenship under section 301 of the Act.

The AAO agrees with the district director's finding that the applicant is ineligible for a certificate of citizenship under section 301 of the Act. The AAO notes, "[t]he applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth." [REDACTED] omitted). The applicant was born in Greece in 1977. The version of section 301 of the Act that was in effect at that time (section 301(a)(7)) therefore controls his claim to derivative citizenship.

In order to derive citizenship pursuant to section 301(a)(7) of the former Act, it must be established that when the child was born, the U.S. citizen parent was physically present in the U.S. or its outlying possession for ten years, at least five of which were after the age of fourteen. *See section 301(a)(7) of the former Act.* In the present case, the applicant must therefore establish that his mother was physically present in the U.S. for a period totaling ten years between [REDACTED] and that five of those years were [REDACTED] when his mother turned 14.¹

The record reflects that the applicant's mother left the United States sometime in 1967, when she was around

¹ The AAO notes that for section 301 of the Act purposes, only the physical presence of a U.S. citizen parent may be taken into account. The section does not allow a U.S. citizen grandparent to satisfy the physical presence requirements.

ten years old. The record contains no evidence that the applicant's mother subsequently resided in the U.S. for any period of time. The AAO finds that the applicant failed to establish that his mother meets the physical presence requirements set forth in section 301(a)(7) of the Act. He is therefore not entitled to derivative U.S. citizenship pursuant to section 301(a)(7) of the former Act.

Section 322 of the former Act stated, in pertinent part:

(a) Application of citizen parents; requirements²

A parent who is a citizen of the United States may apply to the Attorney General [now the Secretary, Homeland Security, "Secretary"] for a certificate of citizenship on behalf of a child born outside the United States. The Attorney General [Secretary] shall issue such a certificate of citizenship upon proof to the satisfaction of the Attorney General [Secretary] 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.

....

- 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 attaining the age of fourteen years.

b) Attainment of citizenship status; receipt of certificate

Upon approval of the application . . . [and] upon taking and subscribing before an officer of the Service [CIS] within the United States to the oath of allegiance required by this chapter of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the Attorney General [Secretary] with a certificate of citizenship.

² The AAO notes that the Child Citizenship Act of 2000 (CCA) repealed section 321, and amended sections 320 and 322. The AAO notes that the provisions of the CCA are not retroactive, and that the amended provisions apply only to persons who were not yet 18-years-old at the time of the CCA. Because the applicant was over the age of 18 at the time of the CCA, he is not eligible for the benefits of section 322 of the amended

The applicant failed to establish that he was physically present in the U.S. pursuant to a lawful admission prior to his eighteenth birthday, as required by section 322(a)(2) of the former Act. The applicant additionally failed to establish that his N-600 application was filed prior to his eighteenth birthday or that the N-600 application process was completed prior to his eighteenth birthday, as required by section 322(b) of the former Act. The AAO notes further that the requirements set forth in section 322(a) and (b) of the former Act are statutorily mandated, and that they are not affected or changed by Service (CIS) processing delays. The AAO therefore finds that the applicant failed to establish that he qualifies for citizenship under section 322 of the former Act.

The AAO additionally notes that the applicant does not qualify for citizenship pursuant to section 321, 8 U.S.C. § 1432, and section 320, 8 U.S.C. § 1431, of the former Act.

Former section 320 of the Act provided that:

(a) A child born outside of the United States, one of whose parents at the time of the child's birth was an alien and the other of whose parents then was and never thereafter ceased to be a citizen of the United States, shall, if such parent is naturalized, become a citizen of the United States, when

(1) such naturalization takes place while such child is under the age of 18 years; and

(2) such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of naturalization or thereafter and begins to reside permanently in the United States while under the age of 18 years.

The record reflects that the applicant's father is not a naturalized U.S. citizen. Moreover, the applicant has not, at any time, resided in the U.S. pursuant to a lawful admission for permanent residence.

Former section 321 of the Act provided, in pertinent part, that:

(a) a child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:

(1) The naturalization of both parents; or

(2) The naturalization of the surviving parent if one of the parents is deceased; or

(3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if the child was born out of wedlock and the paternity of the child has not been established by legitimation; and if-

(4) Such naturalization takes place while said child is under the age of 18 years; and

(5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized

under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

The applicant does not qualify for consideration under former section 321 of the Act. The applicant failed to establish that his father is a naturalized U.S. citizen, or that he otherwise meets the requirements set forth in section 321 of the former Act.

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. In this case, the burden has not been met. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.