



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: KANSAS (ST. LOUIS), MO

Date:

SEP 28 2004

IN RE:

Applicant:



APPLICATION:

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

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

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Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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**DISCUSSION:** The application was denied by the District Director, Kansas (St. Louis), Missouri, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on March 12, 1987, in Australia. The applicant's mother was born in Texas on April 3, 1970, and she is a United States citizen. The applicant's father has no claim to U.S. citizenship. The applicant's parents married in Australia in August 1986. The applicant seeks a certificate of citizenship pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The district director determined that the applicant was ineligible for U.S. citizenship under section 322 of the Act, because she failed to establish she was temporarily present in the U.S. pursuant to a lawful admission, and that she was maintaining such lawful status, as required by section 322(a)(5) of the Act. The application was denied accordingly.

On appeal, the applicant asserts that she meets the requirements for deriving citizenship through her U.S. citizen grandmother, under section 322 of the Act, and that she should not be penalized for Immigration and Naturalization Service (INS, now Citizenship and Immigration Services CIS) application processing delays.

Section 322 of the Act provides, in pertinent part 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 [now Secretary, Homeland Security, "Secretary"] shall issue a certificate of citizenship to such applicant 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 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 and physical custody of the applicant

(5) The child is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.

The record in the present matter reflects that the applicant was admitted into the U.S. on November 6, 2002, pursuant to the visa waiver program, and that her visa waiver status ended on February 5, 2003. The record reflects that the applicant did not depart the United States after her visa waiver status ended. The applicant therefore failed to maintain the lawful status of her admission, as set forth in section 322(a)(5) of the Act. The evidence in the record additionally reflects that the applicant has resided in the United States since November 6, 2002. She therefore also does not meet the residence abroad requirements set forth in section 322(a)(4) of the Act.

The AAO notes further that the requirements for citizenship, as set forth in the Immigration and Nationality Act, are statutorily mandated, and that an applicant is required to meet the statutory provisions in order to obtain U.S. citizenship under the Act. The AAO therefore finds that the applicant must fully satisfy the provisions for citizenship as set forth in section 322 of the Act, and that her eligibility for citizenship under these provisions is not affected or changed by CIS processing delays.

The AAO notes that the applicant also does not meet the requirements for U.S. citizenship as set forth in section 320 of the Act, 8 U.S.C. §1431. Section 320(a) of the Act states that:

- (a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been 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.

Although information contained in the record indicates that the applicant may live in the United States with her U.S. citizen mother, the record contains no evidence to indicate that the applicant was admitted into the United States pursuant to a lawful admission for permanent residence. The record additionally contains no evidence to indicate that since her entry into the United States, the applicant's mother has obtained lawful permanent resident status for the applicant. The applicant has therefore failed to establish that she meets the requirements for citizenship under section 320(a)(3) of the Act.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant has not met his burden in this case and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.<sup>1</sup>

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<sup>1</sup> The AAO notes that the present appeal is dismissed without prejudice to the applicant's reapplying for a certificate of citizenship if she becomes eligible under section 320 or section 322 of the Act.