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U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE: Office: CALIFORNIA SERVICE CENTER Date: DEC 26 2008

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Sections 320 and 322 of the  
Immigration and Nationality Act; 8 U.S.C. §§ 1431 and 1433.

ON BEHALF OF APPLICANT:

[REDACTED]

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Honduras on June 1, 1987. The applicant's mother, [REDACTED] was born in Honduras on December 24, 1970, and she became a naturalized U.S. citizen on May 3, 2004, when the applicant was 16 years old. The applicant does not assert, and the record does not support, that his father was a U.S. citizen. The applicant entered the United States without inspection in or about 1991, and the record does not reflect that he has a legal immigration status. He presently seeks a certificate of citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The district director concluded that the applicant failed to establish he is residing in the United States pursuant to lawful admission for permanent residence, as required by section 320(a) of the Act. The application was denied accordingly.

On appeal, counsel for the applicant contends that the applicant is eligible for citizenship pursuant to section 322 of the Act, and the application should be approved. *Statement from Counsel on Appeal*, dated May 17, 2006.

Section 320 of the Act was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA benefits all persons who have not yet reached their eighteenth birthdays as of February 27, 2001. Because the applicant was thirteen years old on February 27, 2001, he meets the age requirement for benefits under the CCA.

Section 320 of the Act states in pertinent part 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.

Section 322 of the Act applies to children born and residing outside of the United States. The section 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 shall issue a certificate of citizenship to such applicant 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 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 . . . .

Upon review, the applicant has not shown that he became a U.S. citizen by operation of law pursuant to section 320 of the Act. He entered the United States without inspection in or about 1991. Though the applicant indicated on Form N-600 that he became a permanent resident on March 28, 1997, the record does not support this contention. The applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status, on October 23, 1997, yet that application was denied on March 16, 2001. The applicant has presented no evidence to show that he has become a permanent resident of the United States. Accordingly, he has not established that he meets the requirements of section 320(a)(3) of the Act.

On appeal, counsel contends that the applicant is qualified for U.S. citizenship under the authority of section 322 of the Act. However, the applicant is statutorily ineligible for a certificate of citizenship pursuant to section 322(a)(3) of the Act. Citizenship and Immigration Services ("CIS") regulations require that, to obtain citizenship under section 322 of the Act, an N-600 certificate of citizenship application must be filed, adjudicated, and approved before the applicant's 18<sup>th</sup> birthday. 8 C.F.R. § 322.2(a)(3) and section 322(a)(3) of the Act.

In this case, the applicant filed his application on January 4, 2005, when he was 17 years old. However, he reached age 18 approximately five months later on June 1, 2005. The applicant is 19 years old as of the date of this decision. Therefore, he does not meet the age requirement of section 322(a)(3) of the Act.

In addition, section 322(a)(4) of the Act requires that an applicant be living outside the United States with his U.S. citizen parent. As the applicant has been residing in the United States with his U.S. citizen mother, he does not meet section 322(a)(4) of the Act.

Based on the foregoing, the applicant has not shown that he is eligible for a certificate of citizenship under the present Form N-600 application.

The regulation at 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. The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.