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U.S. Citizenship
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Services

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FEB 02 2007

FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

WAC 06 053 51156

IN RE:

Applicant:



APPLICATION:

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

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.


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 Guatemala on August 26, 1996. The applicant's mother was born on August 10, 1977 in Guatemala, and she became a naturalized U.S. citizen on March 16, 2005, when the applicant was eight years old. There is no record that the applicant's parents were ever married. There is also no evidence that the applicant was admitted into the United States as a lawful permanent resident (LPR) at any time. She presently seeks a certificate of citizenship under § 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

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 had not yet reached their eighteenth birthdays as of February 27, 2001. Because the applicant was four years old on February 27, 2001, she 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.

The record reflects that the applicant's mother is a naturalized U.S. citizen, and that the applicant is not yet eighteen years of age. The applicant therefore meets the requirements set forth in subsections (a)(1) and (a)(2) of § 320 of the Act. The director concluded that the applicant had failed to establish that she was admitted as an LPR as required by subsection (a)(3) above; hence, the application was denied.

In her May 31, 2006 response to the director's request for evidence, the applicant's mother noted that the applicant did not have an alien registration card, because she was still in Guatemala. The applicant's mother, however, included a copy of her own certificate of naturalization. On appeal, the applicant's mother submits a copy of her own alien registration card, as evidence of her own lawful permanent residence. Such evidence does not overcome the director's reason for denying the application. In order to be eligible for a certificate of citizenship under § 320 of the Act, the applicant must be an LPR, residing in her mother's legal and physical custody in the United States. The record does not establish that she has been admitted to the United States as an LPR, as set forth in § 320(a)(3) of the Act.

The AAO has also considered the applicant's eligibility for a certificate of citizenship pursuant to § 322 of the Act. Section 322 of the Act applies to children born and residing outside of the United States and states, 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.

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. The evidence in the record reflects that the applicant’s father resides in the United States and that the applicant resides in the physical custody of her paternal grandmother in Kenya. The applicant thus does not meet the section 322(a)(4) requirement that she reside outside of the U.S. in the physical custody of her U.S. citizen parent.

The record does not establish the applicant’s U.S. citizen mother’s length of physical presence in the United States, that the applicant is residing outside the United States in her mother’s physical custody, or that the applicant is temporarily present in the United States pursuant to a lawful admission. For these reasons, the AAO finds that the applicant is also ineligible for a certificate of citizenship pursuant to § 322 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 her burden. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.