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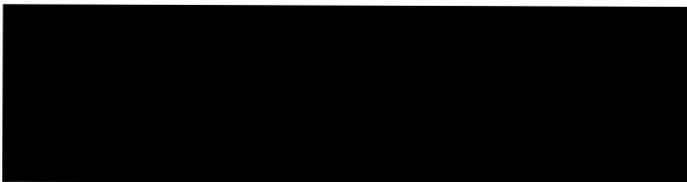
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

E2



FILE: [REDACTED] Office: NEW YORK NY Date: **APR 23 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:

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, Chief
Administrative Appeals Office

DISCUSSION: The Form N-600, Application for Certificate of Citizenship (N-600 Application) was denied by the District Director, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the N-600 application will be denied.

The record reflects that the applicant was born in Cote d'Ivoire on May 31, 1995. The applicant is presently seventeen years old. The applicant was adopted in Cote d'Ivoire on June 22, 2005, by [REDACTED] and [REDACTED], both U.S. citizens. On August 8, 2006, the applicant was admitted into the United States as a lawful permanent resident. The applicant presently seeks a certificate of citizenship based on the claim that he derived U.S. citizenship through his adoptive parents.

The district director determined that the applicant had failed to establish he resided in the legal custody of a U.S. citizen parent for two years, prior to the filing and adjudication of his N-600 application. The N-600 application was denied accordingly.

On appeal the applicant asserts, through his adoptive father [REDACTED], that he has lived with his adoptive parents since 2000. He indicates that he presently lives in Cote d'Ivoire because his parents teach there temporarily.

Section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, provides 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.
- (b) Subsection (a) 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 101(b)(1)(E) of the Act, 8 U.S.C. § 1101(b)(1)(E) states in pertinent part that the term, "child" means an unmarried person under twenty-one years of age who is:

[A] child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years

Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33), states that, "[t]he term "residence" means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent." The Board of Immigration Appeals clarified in, *Matter of Jalil*, 19 I&N Dec. 679 (BIA 1988) that the maintenance of financial interests, the retention of a house, or the intention to return does not establish a person's "dwelling place in fact" for purposes of section 101(a)(33) of the Act.

The two-year residence requirement set forth in section 101(b)(1)(E) of the Act may be satisfied either before

or after an adoption. *Matter of Repuyan*, 19 I&N Dec. 119, 120 (BIA 1984). Legal custody vests over an adopted child, however, by virtue of a court decree. *Matter of Harris*, 15 I&N Dec. 39 (BIA 1970).

In the present matter, the record contains an adoption decree from the Republic of Cote D'Ivoire, Court of Appeal of Abidjan, Trial Court, Division of Grand-Bassam, reflecting that the applicant was adopted by [REDACTED] and [REDACTED] on June 22, 2005, when he was eleven years old. The applicant filed his N-600 application less than two years later, in October 2006. A decision was made on his application less than two years later, on June 11, 2007. Accordingly, the applicant failed to demonstrate that he was legally adopted, or in his adoptive parents' legal custody for at least two years prior to the filing of his N-600 application or the adjudication of the application. The district director therefore correctly determined that the applicant failed to meet the legal custody requirements contained in section 320(a)(3) of the Act, and that he did not qualify for U.S. citizenship under section 320 of the Act.

Section 322 of the Act, 8 U.S.C. § 1432, applies to children born and residing outside of the United States. In the present matter, the record reflects that the applicant was admitted to the United States as a lawful permanent resident on August 8, 2006. The applicant remained with his adoptive parents in the United States until October 3, 2006. He then returned with his adoptive parents to Cote d'Ivoire.

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, Department of 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 (or, at the time of his or her death, had) 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 . . . 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 [Secretary] 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).

As previously discussed, the applicant's adoption occurred less than two years prior to the filing and adjudication of his N-600 application. The applicant therefore failed to meet the legal custody requirements set forth in section 322(a)(4) of the Act. The applicant additionally failed to meet the oath of allegiance requirement contained in section 322(b) of the Act. Accordingly, the applicant does not qualify for U.S. citizenship under section 322 of the Act.

It is noted that the applicant also failed to establish that he acquired U.S. citizenship pursuant to section 301(g) of the Act, 8 U.S.C. § 1401(g), which states in pertinent part that the following shall be nationals and citizens of the United States at birth:

(g) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was 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

The statutory language contained in section 301 of the Act, "[r]equires that the child be born of a United States citizen. There is no indication that this section applies to an adopted child." *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 155 (BIA 2001).

The regulation at 8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. The AAO finds that the applicant has failed to meet his burden of proof in the present matter. The appeal will therefore be dismissed and the N-600 application will be denied.¹

ORDER: The appeal is dismissed. The application is denied.

¹ The present decision is without prejudice to the applicant's filing a new N-600 application or, if eligible, an N-400, Application for Naturalization pursuant to section 316 of the Act, 8 U.S.C. § 1427.