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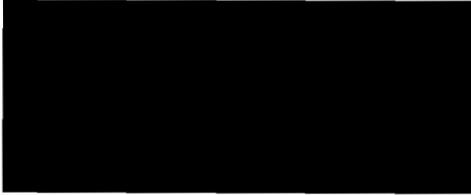
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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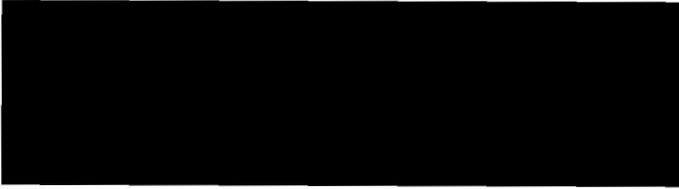
Applicant:



APPLICATION:

Application for Certificate of Citizenship under sections 320, 322, and 301(g) of the Immigration and Nationality Act, 8 U.S.C. §§ 1431, 1433 and 1401(g).

ON BEHALF OF APPLICANT:



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 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.¹ The appeal will be sustained and the N-600 application will be approved.

The record reflects that the applicant was born on April 19, 1998, in Yemen. The applicant's mother is not a U.S. citizen. The applicant's father, [REDACTED], was born in Yemen on May 5, 1971, and he became a naturalized U.S. citizen on March 14, 1989. The record reflects that the applicant's parents were married on January 7, 1994. The applicant presently seeks a certificate of citizenship based on the claim that she acquired or derived U.S. citizenship through her father.

The district director determined the applicant did not acquire U.S. citizenship at birth under section 301(g) of the Act; 8 U.S.C. 1401(g), because she failed to establish that her father ([REDACTED]) was physically present in the United States for at least five years prior to the applicant's birth. The district director determined that the applicant also failed to meet section 322 of the Act, 8 U.S.C. § 1433, citizenship requirements because she failed to establish that she resided with her U.S. citizen parent overseas, and because she did not establish that her U.S. citizen parent was physically present in the United States for five years. In addition, the district director determined that the applicant failed to establish that she derived U.S. citizenship pursuant to section 320 of the Act, 8 U.S.C. § 1430, because she did not reside in the United States in the custody of her U.S. citizen parent, pursuant to a lawful admission for permanent residence. The N-600 application was denied accordingly.

On appeal the applicant asserts, through counsel, that the record contains sufficient evidence to establish that the applicant's father met U.S. residency requirements for transmission of citizenship purposes under section 322 of the Act.

Section 320 of the Act permits a child born outside of the U.S. to automatically become a citizen of the United States upon fulfillment of the following conditions:

- (a) (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 contains no evidence to indicate or establish that the applicant is residing in the United States pursuant to a lawful admission for permanent residence, as set forth in section 320(a)(3) of the Act. The applicant therefore does not qualify for citizenship under section 320 of the Act.

¹ It is noted that the district director issued one denial decision for the applicant and two of her siblings ([REDACTED] and [REDACTED]). As a result, the applicant attempted to include her two siblings in the present appeal. Although the present AAO decision is applicable to all three sibling cases, the applicant only submitted one fee for the I-290B Notice of Appeal, therefore only decision will be rendered. The AAO notes, however, that as all the siblings were included in the district director's decision, materials contained in all three A files were reviewed in adjudicating the present case.

Section 322 of the Act applies to children born and residing outside of the United States, and 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.

The record reflects that the applicant was admitted into the United States with a K4 nonimmigrant visa on April 30, 2006. The applicant has resided in the U.S. with her father and family since that date. The applicant therefore failed to establish that she meets the requirements contained in section 322(a)(4) of the Act. Accordingly, she is ineligible for citizenship under section 322 of the Act.

The record contains a U.S. naturalization certificate issued to _____ in New York on March 14, 1989, prior to the applicant’s birth. The applicant is therefore eligible for consideration under section 301 of the Act provisions.

“[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.” *Chau v. Immigration and Naturalization*

Service, 247 F.3d 1026, 1029 (9th Cir. 2000) (Citations omitted.) The applicant was born in Yemen in 1998. Section 301(g) of the Act therefore applies to her acquisition of citizenship claim.

Section 301(g) of the Act provides in pertinent part that the following shall be citizens of the United States at birth:

[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 cumulative record contains the following evidence pertaining to [REDACTED]'s physical presence in the United States prior to the applicant's birth:

A U.S. Certificate of Naturalization issued to [REDACTED] in New York on March 14, 1989.

New York business-related tax, license, certificate and payments evidence reflecting Mr. [REDACTED]'s New York address and his operation of a business in New York between February 1992 and June 1995, and between September 1997 and December 2004.

New York driver's license, and New York parking and driving violations evidence reflecting [REDACTED]'s New York address between: November 1992 and September 1993; March and December 1995; and in February 1996, April 1997, and November 1998.

Apartment rental agreement and payment evidence reflecting [REDACTED]'s address in New York between December 1994 and January 1996.

New York business lease agreement information reflecting that [REDACTED] leased property for his store between June 1995 and October 1999.

The regulation provides at 8 C.F.R. § 341.2(c) that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. Under the preponderance of evidence standard, it is generally sufficient that the proof establish that something is probably true. *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989.)

The AAO finds, upon review of the totality of evidence, that the applicant has established by a preponderance of the evidence, that her father was physically present in the U.S. for five years after May 5, 1985 (when he turned fourteen) and prior to the applicant's birth on April 19, 1998. Because the applicant has satisfied the requirements for transmission of citizenship under section 301(g) of the Act, the appeal will be sustained and the N-600 application approved.

ORDER: The appeal is sustained. The application is approved.