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U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: LOS ANGELES, CA

Date:

**MAY 15 2008**

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

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

The record reflects that the applicant was born on October 23, 2006, in Mexico. The applicant's mother is not a U.S. citizen. The applicant's father, [REDACTED] was born in Mexico, and he became a naturalized U.S. citizen on June 20, 1996, prior to the applicant's birth. The applicant's parents were married on June 3, 2003. The applicant presently seeks a certificate of citizenship based on the claim that he derived U.S. citizenship through his father.

The district director determined that the applicant failed to meet section 322 of the Act, 8 U.S.C. § 1433, derivative citizenship requirements, because he did not establish that he resided outside of the United States in the physical custody of his U.S. citizen father. The Form N-600 was denied accordingly.

Through his father, the applicant indicates on appeal that [REDACTED] is involved in his life, and that he meets the necessary requirements for transmission of U.S. citizenship to the applicant.

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 citizen parent . . . .

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

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 applicant’s father indicates on appeal that the applicant was born in Mexico, and that the applicant lives permanently in Mexico with his mother pending the resolution of immigration-related issues regarding her ability to live in the United States. [REDACTED] lives and works in the United States, and he travels with his other daughter to Mexico on weekends, to spend time with the applicant and his mother. [REDACTED] submits a copy of his 2006 Federal income tax return reflecting his residence in the United States. He also submits a copy of the applicant’s Mexican birth certificate, and he submits evidence that in 2007, he obtained a U.S. federal taxpayer identification number for the applicant.

The AAO finds that the applicant has failed to establish by a preponderance of the evidence that he meets the requirements for derivative citizenship under section 322 of the Act. The evidence in the record reflects that the one-year-old applicant has never resided in the United States with his father. Rather, the applicant has resided in Mexico with his mother since birth. The applicant’s Form N-600, as well as evidence contained in the record, and statements made by [REDACTED] on appeal, reflect that the applicant’s father lived and worked in the United States before, and after, the applicant’s birth, and that he continues to reside in the United States. The applicant has therefore failed to satisfy the section 322(a)(4) of the Act requirement that he reside outside of the United States in the physical custody of his U.S. citizen parent.

The AAO notes further that the applicant failed to establish that he entered the United States temporarily pursuant to a lawful admission, and that he is maintaining such lawful status, as required by section 322(a)(5) of the Act. The record additionally contains insufficient evidence to establish that the applicant’s father met the U.S. physical presence requirements contained in section 322(a)(2)(A) of the Act. Accordingly, the applicant does not qualify for U.S. citizenship under section 322 of the Act.

The regulation at 8 C.F.R. § 341.2(c) provides in pertinent part 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 that the applicant has not met his burden of proof in the present matter. The appeal will therefore be dismissed and the N-600 application will be denied.<sup>1</sup>

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

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<sup>1</sup> It is noted that section 301(g) of the Act, 8 U.S.C. § 1401(g), provides for transmission of U.S. citizenship at birth. Section 301(g) of the Act provisions state, 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 record reflects that the applicant's father became a naturalized U.S. citizen on June 20, 1996, in Los Angeles, California. Because [REDACTED] was a U.S. citizen at the time of the applicant's birth, the applicant's U.S. citizenship claim may be considered under section 301(g) of the Act.

In the present matter, the applicant's Form N-600 states that the applicant's father has been in the United States since 1966. The record contains no evidence, however, to corroborate this claim. Moreover, the AAO notes that an application for citizenship under section 301(g) of the Act must be made with the U.S. governmental agency with jurisdiction over the applicant's place of residence. The U.S. Department of State, not U.S. Citizenship and Immigration Services, has jurisdiction over U.S. citizenship applications made abroad. Because the applicant's address is abroad, in Mexico, a U.S. Embassy or Consular office in Mexico must adjudicate a citizenship claim made by the applicant under section 301(g) of the Act.