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U.S. Citizenship
and Immigration
Services

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FILE:

Office: SEATTLE, WA

Date: FEB 23 2005

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Interim District Director, Seattle, Washington, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on May 18, 1985, in Canada. The applicant's father, [REDACTED] was born in Canada on September 11, 1959, and he is a United States (U.S.) citizen. The applicant's mother [REDACTED] was born in Canada on June 10, 1957, and she is not a U.S. citizen. The applicant's parents married in Canada on November 5, 1983. The applicant seeks a certificate of citizenship pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433, based on the claim that he derived U.S. citizenship through his paternal grandmother.

The interim district director determined that the applicant was ineligible for U.S. citizenship under section 322 of the Act, because he had failed to establish he was under the age of eighteen at the time of his citizenship interview. The application was denied accordingly.

On appeal, the applicant, through his father, asserts that he met the requirements for deriving citizenship through his U.S. citizen grandmother when he filed his Form N-600, Application for Certificate of Citizenship in 2002. The applicant asserts further that he should not be penalized U.S. Citizenship and Immigration Services (CIS) application processing errors and delays.

The AAO notes that its appellate jurisdiction is limited, and that the AAO has no jurisdiction over unreasonable delay claims arising under the Act or pursuant to constitutional due process claims. *See generally*, 8 C.F.R. § 103.1(f)(3)(iii) (2003) and 8 C.F.R. § 2.1 (2004). *See also generally*, *Fraga v. Smith*, 607 F.Supp. 517 (U.S. Dist.Ct. Or. 1985) (Relating to federal court jurisdiction over such claims).

Moreover, the AAO finds that the requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and that CIS lacks statutory authority to issue a certificate of citizenship if an applicant fails to meet the relevant statutory provisions set forth in the Act. *See generally*, *Iddir v. INS*, 301 F.3d 492 (7th Cir. 2002). The AAO therefore finds that the applicant's eligibility for citizenship under section 322 provisions is not affected or changed by CIS processing delays, and that in order to obtain a certificate of citizenship, the applicant must establish that he fully meets section 322 of the Act requirements.

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, 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 . . . 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.

The record reflects that the applicant turned eighteen on May 18, 2003, prior to CIS adjudication or approval of his citizenship application. The applicant therefore does not meet the statutory requirements for citizenship as set forth in section 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 his burden in this case and the appeal will be dismissed.

ORDER: The appeal is dismissed.