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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

EG

FILE:

Office: SEATTLE, WASHINGTON

Date: MAR 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the 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 November 12, 1985 in Hong Kong. The applicant's father, a U.S. citizen, adopted the applicant on July 15, 2000. The applicant's adoptive mother is not a U.S. citizen. The applicant presently seeks a certificate of citizenship pursuant to § 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The district director concluded that the applicant was statutorily ineligible for a certificate of citizenship under § 322 of the Act because he turned eighteen years old prior to final adjudication of his application, and because he was not physically present in the United States. The application was denied accordingly.

On appeal, the applicant indicates, through his father, that he was misled by State Department personnel at the consulate in Hong Kong, which caused delays in his citizenship application process. The applicant's father writes on appeal that the applicant made every attempt to comply with statutory requirements before his eighteenth birthday, and he should thus be granted a certificate of citizenship.

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.

The AAO notes that the requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and that U.S. Citizenship and Immigration Services (CIS) lacks authority to issue a certificate of citizenship when 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 § 322 of the Act is not affected by administrative delays, and that in order to obtain a certificate of citizenship, the applicant must establish that he fully meets § 322 of the Act requirements. The applicant turned eighteen years of age on November 12, 2003, six days after the filing of the N-600 Application for Citizenship and Issuance of Certificate under section 322. The applicant was not temporarily present in the United States pursuant to a lawful admission prior to his eighteenth birthday as required by statute. He is, thus, ineligible for a certificate of citizenship pursuant to § 322 of the Act.

8 C.F.R. § 341.2(c) provides 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.