

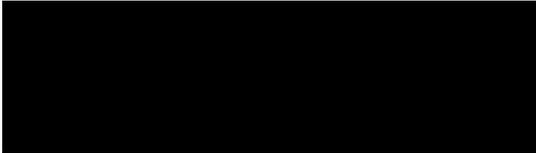
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: PHILADELPHIA Date: AUG 28 2006

IN RE: APPLICANT: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Section 322 of the former 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 application was denied by the District Director, Philadelphia, 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 March 7, 1986 in the Bahamas. The applicant does not assert that her parents were U.S. citizens, and the record does not support that they were. The applicant was adopted on January 30, 2003 by naturalized U.S. citizen parents, [REDACTED]. As the applicant did not acquire citizenship at birth through her natural parents, she filed a Form N-600K, Application for Citizenship and Issuance of Certificate under Section 322 of the Immigration and Nationality Act, 8 U.S.C. § 1433, to obtain citizenship based on the naturalization of her adoptive parents.

The district director concluded that the applicant was statutorily ineligible for a certificate of citizenship under section 322 of the Act because she was adopted after she reached age 16. *Decision of the Director*, dated March 18, 2004.

The record contains a statement from the applicant; a copy of the applicant's birth certificate; copies of the naturalization certificates for the applicant's adoptive parents; a copy of the applicant's adoption decree, and; a copy of the applicant's passport. The entire record was reviewed and considered in rendering this decision.

Section 322 of the Act provides the following:

(a) A parent who is a citizen of the United States (or, if the citizen parent has died during the preceding 5 years, a citizen grandparent or citizen legal guardian) 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 shall issue a certificate of citizenship to such applicant upon proof, to the satisfaction of the Attorney General, that the following conditions have been fulfilled:

(1) At least one parent (or, at the time of his or her death, was) 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 (or, at the time of his or her death, had) 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 (or, if the citizen parent is deceased, an individual who does not object to the application).

(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, except as provided in the last sentence of section 337(a), 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 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).

Section 101(b)(1) of the Act provides the following:

(1) The term "child" means an unmarried person under twenty-one years of age who is-

(E) (i) 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 or if the child has been battered or subject to extreme cruelty by the adopting parent or by a family member of the adopting parent residing in the same household: Provided, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act; or

(ii) subject to the same proviso as in clause (i), a child who: (I) is a natural sibling of a child described in clause (i) or subparagraph (F)(i); (II) was adopted by the adoptive parent or parents of the sibling described in such clause or subparagraph; and (III) is otherwise described in clause (i), except that the child was adopted while under the age of 18 years

Upon review, the applicant has not established that she is eligible for U.S. citizenship under section 322 of the Act. As noted above, the applicant was adopted on January 30, 2003, after she had reached age 16. Pursuant to section 322(c) of the Act, the applicant must satisfy the requirements applicable to adopted children under section 101(b)(1) in order to be eligible for benefits under section 322 of the Act. Section 101(b)(1)(E)(i) of

the Act requires that a child be adopted while under the age of 16 in order to qualify as a "child." As the applicant had reached age 16 upon her adoption, she does not satisfy section 101(b)(1)(E)(i) of the Act.

Section 101(b)(1)(E)(ii) of the Act potentially accords the status of "child" to an applicant who is the natural sibling of another child who was adopted by the same parents. However, the applicant has not asserted, and the record does not show, that she has any natural siblings, or that her adoptive parents have adopted other children. Thus, the record does not reflect that the applicant meets the requirements of section 101(b)(1)(E)(ii) of the Act.

Accordingly, the applicant has not shown that she satisfies the requirements applicable to adopted children under section 101(b)(1), as required by section 322 of the Act. Therefore, the applicant has not shown that she is eligible for citizenship under section 322 of the Act and the application may not be approved.

The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the applicant to establish his or her claimed citizenship by a preponderance of the evidence. The applicant has not met her burden in the present matter. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.