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U.S. Citizenship
and Immigration
Services

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EG



FILE: [REDACTED] Office: NEW YORK, NY

Date: MAR 09 2006

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship pursuant to 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 District Director, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The Form N-600, Application for Certificate of Citizenship (N-600 Application) reflects that the applicant was born in Brazil on April 6, 1996, and that the applicant's mother is [REDACTED] Ms. [REDACTED] a U.S. citizen born on December 6, 1941. The N-600 application reflects that the applicant resides in Brazil, and the record contains no evidence to establish that the applicant has been temporarily admitted into the United States. The applicant seeks a certificate of citizenship pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. §1433.

The district director found that the applicant was ineligible for citizenship pursuant to section 322 of the Act, because she did not reside outside of the United States in the legal and physical custody of her U.S. citizen parent, as required by section 322(a)(4) of the Act. The application was denied accordingly.

On appeal, the applicant, through her mother, asserts that [REDACTED] resides with the applicant in Brazil for six months every year, and that for the other six months of the year, [REDACTED] resides in the U.S. without the applicant. The applicant asserts that [REDACTED] passport demonstrates she has spent six months a year in Brazil for the last nine years, and the applicant requests oral argument before the AAO in order to more fully establish her claim.

The AAO notes that under Volume 8 of the Code of Federal Regulations (8 C.F.R.) Section 103.3(b), the applicant must explain in writing why oral argument is necessary. U.S. Citizenship and Immigration Services (CIS) has sole authority to grant or deny a request for oral argument and will grant such argument only in cases that involve unique factors or issues of law that cannot be adequately addressed in writing. The AAO finds that in the present matter, no cause for oral argument has been stated or shown. The request for oral argument will therefore be denied.

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.

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 record contains a copy of an “Installment Contract for Sale of Real Estate – New York” reflecting that [REDACTED] purchased a home at [REDACTED] on December 1, 1975. The N-600 application reflects that [REDACTED]’s residence continues to be at [REDACTED]. The N-600 application reflects further that [REDACTED] married in August 1997, and that her spouse resides at [REDACTED].

The applicant asserts that passport stamp evidence submitted on appeal establishes that [REDACTED] resides with the applicant in Brazil for six months out of the year, and that she therefore meets section 322(a)(4) residence requirements. The AAO notes that the record does not contain a copy of the passport evidence referred to by the applicant. The AAO finds, however, that even if the passport stamp evidence were contained in the record, it would not establish where [REDACTED] resides in Brazil, or whom she resides with. Nor would such evidence establish that [REDACTED]’s “residence”, as defined in section 101(a)(33) of the Act, is in Brazil rather than in the United States.

Based on the above factors, the AAO finds that the applicant has failed to establish that she resides outside of the U.S. in the legal and physical custody of her citizen parent. Because the applicant has failed to establish that she meets section 322(a)(4) of the Act requirements, the AAO finds it unnecessary to address whether the applicant meets the remaining requirements set forth in section 322 of the Act.

8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. The applicant has failed to meet her burden. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.