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U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

[REDACTED]

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FILE:

Office: BUFFALO, NEW YORK

Date: MAR 20 2006

IN RE:

Applicant:

[REDACTED]

APPLICATION:

Application for Certificate of Citizenship under former § 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, Buffalo, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born in Hong Kong on October 11, 1982. The applicant's parents, who are married to each other, were born in Hong Kong and are not U.S. citizens. The applicant's grandfather was born in Hong Kong, and he became a naturalized U.S. citizen in 1972. The applicant entered the United States and was admitted as a lawful permanent resident on July 2, 1996. The applicant resided in this country with a U.S. citizen uncle until he was eighteen. The applicant 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 had failed to establish that he resided outside of the United States in the legal and physical custody of a U.S. citizen father, as required by § 322 of the Act. The district director also noted that the applicant is over the age of eighteen, and therefore fails to qualify for the age requirement set forth in § 322 of the Act. The application was denied accordingly. On appeal, the applicant asserts that he may qualify for derivative citizenship through his U.S. citizen grandfather or uncle, with whom he resided for several years. The applicant states that his uncle was appointed his legal guardian, and that his uncle "adopted" him; however, the record contains no documentation in support of these assertions.

The AAO notes that the district director erroneously applied § 322 of the Act as amended rather than the former § 322 of the Act. The AAO finds that this error is harmless, however, as the applicant does not qualify for a certificate of citizenship under either provision of law.

The Child Citizenship Act of 2000 (CCA) took effect on February 27, 2001 and amended former § 322 of the Act. The provisions of the CCA are not retroactive, however, and the amended provisions of § 322 of the Act apply only to persons who were not yet eighteen years old as of February 27, 2001. Because the applicant was already eighteen years of age on February 27, 2001, he is not eligible for the benefits of the amended § 322 of the Act. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

Former § 322 of the Act provides, in pertinent part:

(a) Application of citizen parents; requirements

A parent who is a citizen of the United States may apply to the Attorney General [now the Secretary, Homeland Security, "Secretary"] for a certificate of citizenship on behalf of a child born outside the United States. The Attorney General [Secretary] shall issue such a certificate of citizenship 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 child is physically present in the United States pursuant to a lawful admission.
- 3) The child is under the age of 18 years and in the legal custody of the citizen parent.

.....  
b) Attainment of citizenship status; receipt of certificate

Upon approval of the application . . . [and] upon taking and subscribing before an officer of the Service [CIS] within the United States to the oath of allegiance required by this chapter 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 evidence in the record reflects that neither of the applicant's parents is a U.S. citizen, and the applicant is already over the age of eighteen years old. The applicant thus does not meet the requirements described under subsections (a)(1) and (a)(3) of former § 322 of the Act. Moreover, the applicant could not have taken an oath of allegiance prior to his eighteenth birthday, as required under subsection (b) above, since, as noted, his application was not yet approved by that cut-off date. He has not established eligibility for derivative citizenship under the former § 322 of the Act.

The record contains no documentation relating to the applicant's claimed adoption; in fact, on his Form N-600 application the applicant indicated that he was not adopted. In addition, none of the affidavits on the record supports the assertion that the applicant's uncle adopted him. The applicant is therefore ineligible for U.S. citizenship through any provision of law relating to adopted children.

The AAO notes that the applicant is not eligible for a certificate of citizenship by virtue of his grandfather's U.S. citizenship. The only provision of law allowing for derivation of U.S. citizenship through a grandparent is the current § 322 of the Act, as amended. As discussed above, the applicant does not qualify for the provisions of § 322 as amended, since he was already eighteen years old at the time the new law came into effect.

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; hence, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.