

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

EG



FILE: [REDACTED] Office: PHOENIX Date: APR 24 2007

IN RE: Applicant: K [REDACTED]

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, Chief
Administrative Appeals Office

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

The record reflects that the applicant was born in Mexico on August 9, 1998. The applicant's mother, [REDACTED] was born in Arizona, and she is a U.S. citizen. The applicant does not assert, and the record does not support, that her father, [REDACTED], is a U.S. citizen. The applicant's parents married in Arizona on September 10, 1987. The applicant entered the United States on February 5, 2004 as a B-2 visitor for pleasure. The record reflects that she filed a Form I-485 application for permanent residence, but that the application was denied on December 29, 2005. The record further reflects that the applicant's U.S. citizen mother resides in 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 concluded the applicant failed to establish that her mother was present in the United States for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years, as required by section 322(a)(2)(A) of the Act. The district director further found that the applicant did not establish that her grandmother is a U.S. citizen, thus she does not meet the requirements of section 322(a)(2)(B) of the Act. The district director determined that the applicant and her U.S. citizen mother are residing in the United States, thus the applicant does not meet section 322(a)(4) of the Act. The application was denied accordingly.

On appeal, the applicant's mother explains that her son was issued a certificate of citizenship based on the same facts, and thus the applicant should also receive a certificate of citizenship. *Statement from Applicant's Mother on Form I-290B*, submitted October 6, 2006.

The record contains a statement from the applicant's mother on Form I-290B; documentation in connection with the applicant's Form I-485, Application to Register Permanent Residence or Adjust Status; a copy of the applicant's birth certificate; a copy of the applicant's Form I-94 Departure Record; copies of the applicant's passport and B-1/B-2 visa; a copy of a Form G-325A for the applicant's mother; a copy of the applicant's mother's birth certificate; a copy of the applicant's parents' marriage certificate; a copy of a certificate documenting the applicant's mother's baptism and first communion; copies of tax records for the applicant's grandfather; copies of birth certificates for three of the applicant's mother's siblings; a copy of the marriage certificate for the applicant's mother's parents, and; copies of documents that reflect the applicant's grandmother's presence in the United States. The entire record was considered in rendering this decision.

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.

Section 320 of the Act states in pertinent part that:

- (a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:
 - (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
 - (2) The child is under the age of eighteen years.
 - (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

Upon review, the applicant has not shown that her mother meets the residency requirement of section 322(a)(2)(A) of the Act. Specifically, the applicant's mother had not resided in the United States for two years after attaining the age of fourteen years as of the date that the present application was filed. The applicant's mother reached age fourteen on June 4, 1982. The present application was filed on December 1, 2003. On her Form N-600, the applicant stated that her mother resided in the United States from June 4, 1968 to August 1, 1977 (approximately nine years and two months), from August 15, 1987 to October 30, 1987 (two months and 15 days), and from August 6, 2003 to the present (three months and 25 days prior to the date the application was filed on December 1, 2003.) The documents in the record do not contradict these periods of residence, or support that the applicant's mother resided in the United States for additional periods. Thus, the applicant represented that her mother resided in the United States for approximately four months and ten days between the date that the applicant's mother reached age 14 and the date the Form N-600 application was filed.

The applicant must establish eligibility at the time of filing the Form N-600 application. An application may not be approved at a future date after the applicant becomes eligible under a new set of facts. As of the date

the present application was filed, December 1, 2003, the applicant's mother had not resided in the United States for two years after attaining the age of fourteen years. Thus, the applicant has not shown that her mother met the residency requirement of section 322(a)(2)(A) of the Act.

The applicant submitted evidence of her grandmother's presence in the United States, including documentation showing her presence from approximately 1961 until 1977. However, the applicant has not provided any documentation to show that her grandmother is a U.S. citizen. Thus, the applicant has not established that her mother has a U.S. citizen parent, as contemplated by section 322(a)(2)(B) of the Act.

The record reflects that the applicant's mother resides in the United States. A Form G-325A for the applicant's mother states that she has resided in the United States since August 2003, and that she has held employment with two separate organizations since her arrival. The applicant's mother reports an address in Surprise, Arizona, and the record contains no indication that she maintains a residence abroad. As the applicant's mother resides in the United States, the applicant has not shown that she is "residing outside of the United States in the legal and physical custody of [her mother]," as required by section 322(a)(4) of the Act.

Based on the foregoing, the applicant has not shown that she meets the requirements for a certificate of citizenship under section 322(a) of the Act.

The AAO has further considered whether the applicant meets the requirements of section 320(a) of the Act. The record reflects that she filed a Form I-485 application for permanent residence, but that the application was denied on December 28, 2005. Therefore, the applicant is not residing in the United States "pursuant to a lawful admission for permanent residence," as required by section 320(a)(3) of the Act. The applicant has not shown that she is eligible for a certificate of citizenship pursuant to section 320(a) of the Act.

The regulation at 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 her burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.