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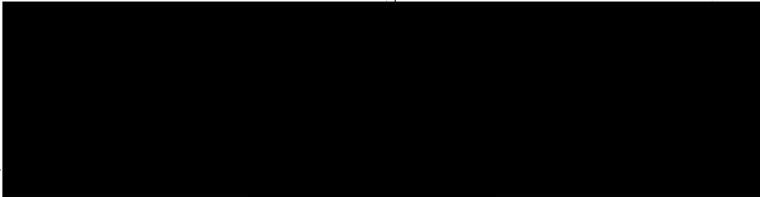
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U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

Fl



FILE:

OFFICE: ORLANDO, FLORIDA

Date:

DEC 11 2007

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Orlando, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application denied.

The record reflects that the applicant was born in Brazil on October 29, 1984. She turned eighteen on October 29, 2002. The applicant's Form N-600, Application for Certificate of Citizenship (N-600 Application) indicates that the applicant's father was born in Brazil, and that he acquired U.S. citizenship at birth through his U.S. citizen mother. The applicant's mother is not a U.S. citizen. The applicant presently seeks a certificate of citizenship pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433, based on the claim that she derived U.S. citizenship through her paternal grandmother.

The field office director determined that the applicant was not eligible for U.S. citizenship under section 322 of the Act because she failed to obtain U.S. Citizenship and Immigration Service (CIS) approval of her N-600 application, or take the required oath prior to turning eighteen, as required by section 322 of the Act. The application was denied accordingly.

On appeal the applicant asserts that she filed a completed N-600 application prior to her eighteenth birthday, and that she should not be penalized for CIS processing delays.

The AAO notes that its appellate jurisdiction is limited, and that the AAO has no jurisdiction over unreasonable delay claims arising under the Act or pursuant to constitutional due process claims. 8 C.F.R. § 103.1(f)(3)(iii) (2003) and 8 C.F.R. § 2.1 (2004). *See also, Fraga v. Smith*, 607 F.Supp. 517 (U.S. Dist.Ct. Or. 1985) (Relating to federal court jurisdiction over such claims.) The AAO notes further that the requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress. CIS lacks statutory authority to issue a certificate of citizenship when an applicant fails to meet the relevant statutory provisions set forth in the Act. *Iddir v. INS*, 301 F.3d 492 (7<sup>th</sup> Cir. 2002.) The AAO therefore finds that the applicant's eligibility for citizenship under section 322 provisions is not affected or changed by CIS delays, and that in order to obtain a certificate of citizenship, the applicant must establish that she fully meets section 322 of the Act requirements.

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.

(b) Upon approval of the application (which may be filed from abroad) and . . . 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 [Secretary] with a certificate of citizenship.

The record reflects that the applicant turned eighteen on October 29, 2002, prior to CIS adjudication or approval of her citizenship application. The applicant therefore does not meet the statutory requirements for citizenship as set forth in section 322(b) of the Act. Because the applicant failed to meet the age requirements set forth in section 322 of the Act, the AAO finds it unnecessary to address whether the applicant's paternal grandmother satisfied the physical presence requirements set forth in section 322(a)(2) of the Act.

The AAO notes that the evidence in the record also fails to establish that the applicant acquired citizenship pursuant to U.S. citizenship at birth provisions contained in the Act. "The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth." *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026,1029 (9<sup>th</sup> Cir. 2000) (citations omitted.) The applicant was born on October 29, 1984. Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), is therefore applicable to an acquisition of citizenship at birth claim.

Section 301(a)(7) of the former Act provides in pertinent part that:

The following shall be nationals and citizens of the United States at birth: . . . a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years. . . .

The record contains no evidence to establish that the applicant's father was physically present in the United States for ten years prior to the applicant's birth. The applicant therefore does not meet the requirements for U.S. citizenship under section 301(a)(7) of the Act.

The burden of proof is on the claimant to establish her claimed citizenship by a preponderance of the evidence. See 8 C.F.R. § 341.2(c). The AAO finds that the applicant has not met her burden of proof in the present matter. The appeal will therefore be dismissed and the application will be denied.



**ORDER:** The appeal is dismissed. The application is denied.