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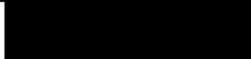
U.S. Citizenship
and Immigration
Services

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FILE:



Office: PHILADELPHIA, PA

Date: JUL 27 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The record reflects that the applicant [REDACTED] was born in China on October 19, 2004. The applicant's biological parents are unknown. She was adopted on December 13, 2005 by [REDACTED] and [REDACTED]. The applicant is the beneficiary of an approved Form I-600, Petition for Eligible Orphan. She was admitted to the United States as a B-2 Visitor on March 5, 2006. The applicant's adoptive mother [REDACTED], became a naturalized U.S. citizen on May 10, 2006. The applicant's adoptive father, [REDACTED] is a lawful permanent resident of the United States. The applicant is residing in the United States with her adoptive parents. The applicant's mother filed a Form N-600K on the applicant's behalf seeking a Certificate of Citizenship pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The district director determined that the applicant had failed to establish that she was residing outside the United States in the legal and physical custody of a U.S. citizen parent. The district director therefore found that she was ineligible for citizenship under section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

On appeal, [REDACTED] maintains that the applicant "is presently in the United States in lawful temporary status and is maintaining such status." See Form I-290B, Notice of Appeal.

Section 322 of the Act, 8 U.S.C. § 1433, was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA benefits all persons who have not yet reached their 18th birthdays as of February 27, 2001. Because the applicant was under the age of 18 on February 27, 2001, she meets the age requirement for benefits under the CCA.

Section 322 of the Act, 8 U.S.C. § 1433, applies to children born and residing outside of the United States, and provides 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 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 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 [citizen parent] (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).

(emphasis added). In order to satisfy the requirements of section 322(a)(4) of the Act, the applicant must establish that she resides *outside of the United States* in the legal and physical custody of her U.S. citizen parent. The AAO notes that by the applicant's own statements in the Form N-600, Application for Certificate of Citizenship, and Form I-290B, Notice of Appeal to the AAO, the applicant is residing in the United States with her adoptive parents. The AAO must conclude that the applicant cannot establish eligibility for citizenship under section 322(a)(2)(4) of the Act because she is not residing outside the United States in the physical and legal custody of her U.S. citizen parent.

The applicant is also ineligible for citizenship under section 320 of the Act, 8 U.S.C. § 1431, because she has not been admitted for lawful permanent residence. Section 320 of the Act, 8 U.S.C. § 1431, provides, 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.

Thus, upon admission to the United States as a lawful permanent resident, an adoptive child of a U.S. citizen

may automatically acquire U.S. citizenship. The applicant has not been admitted for lawful permanent residence and is therefore ineligible for citizenship under section 320 of the Act, 8 U.S.C. § 1431.

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 failed to meet her burden in the present matter. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.