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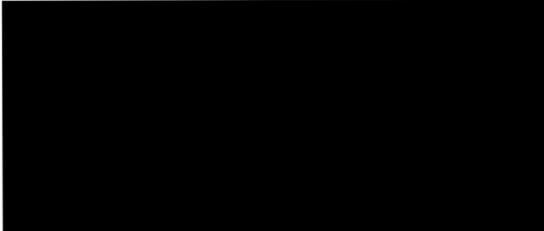
U.S. Department of Homeland Security
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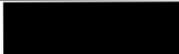
U.S. Citizenship
and Immigration
Services

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EB



FILE:



Office: ST. PAUL, MN

Date: JUL 17 2008

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 cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, St. Paul, Minnesota, 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 Nigeria on September 17, 2001. The applicant's father, [REDACTED] became a U.S. citizen when he naturalized on September 13, 2006. The applicant's parents were married on November 27, 2006. The applicant's parents reside in Minnesota. The applicant resides in Nigeria. 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 field office 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 director therefore found her ineligible for citizenship and denied her application accordingly.

On appeal, the applicant submits a brief, an affidavit executed by her mother, and an affidavit executed by her aunt. The applicant maintains that she resides in her father's physical custody because she is residing with her father's family at his "secondary residence." See Statement of the Applicant on Form I-290B, Notice of Appeal to AAO.

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).

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 his 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 the documents submitted in support of the application, she is not residing with her parents. The record clearly indicates that the applicant's parents reside in Minnesota, and the applicant resides in Nigeria. The AAO notes in particular the Affidavit of [REDACTED] (the applicant's aunt) verifying that the applicant's father has resided and been physically present in the United States continuously since 1997. The AAO is not persuaded that the applicant's father maintains a "secondary residence" in Nigeria, or that maintaining such a "residence" means that applicant is residing abroad in her father's legal and physical custody. As defined in the Act, "residence" refers to a "general place of abode." See Section 101 of the Act, 8 U.S.C. § 1101. The record reflects that the applicant's father's general place of abode is in Minnesota, not in Nigeria. The AAO must therefore 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 custody of her U.S. citizen parent.¹

The AAO notes that 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 The AAO notes the constitutional and equitable claims made in the applicant's brief. The AAO, however, is without jurisdiction to consider such claims as its jurisdiction is limited to those matters specifically delegated by regulation. The AAO further notes that a person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 885 (1988).

- (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.

Under section 320 of the Act, upon admission to the United States as a lawful permanent resident, the child of a U.S. citizen may automatically acquire U.S. citizenship. The applicant in this case 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. Should she be admitted as a lawful permanent resident before her 18th birthday, she may acquire U.S. citizenship under section 320 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 failed to meet her burden in the present matter. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.