



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: NEW YORK, NY Date: MAY 21 2008

IN RE: Applicant: [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, New York, New York., and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on May 27, 2004 in Italy. The applicant's mother, [REDACTED] is a native-born U.S. citizen, born on December 19, 1968. The applicant's father, [REDACTED] is not a U.S. citizen. The applicant's maternal grandfather, [REDACTED], acquired U.S. citizenship through birth abroad to a U.S. citizen parent, on June 7, 1937. The applicant presently seeks a certificate of citizenship claiming that she is a U.S. citizen under section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The district director found that that applicant had failed to establish that she was residing in her mother's physical custody. The application was accordingly denied.

On appeal, the applicant, through her mother, states that she listed an erroneous address on her application for certificate of citizenship and maintains that she resides in her mother's custody. In support of her appeal, the applicant submits a school certification indicating her address as well as utility bills listing her mother's residence.

Section 322 of the Act, 8 U.S.C. § 1433, governs derivative citizenship claims of children who, like the applicant, were born and are residing outside the United States. Section 322 of the Act was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA benefits all persons who had not yet reached their 18th birthdays as of February 27, 2001. Because the applicant is under 18 years of age, she meets the age requirement for benefits under the CCA.

Section 322 of the Act, 8 U.S.C. § 1433, 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).

The record in this case reflects that the applicant is residing in Italy at the same address as her mother, a U.S. citizen. *See* School certificate submitted on appeal; *see also* Civil Status-Residence Certificate. The record further indicates that her mother does not have the required physical presence in the United States to transmit citizenship. Nevertheless, the applicant's grandfather appears to have resided in the United States from 1958 until 1972. The evidence in the record relating to the applicant's grandfather's presence in the United States includes: his union membership and dues card dated 1960 to 1972, his selective service registration dated 1958, his Form DD-214 listing his service in the U.S. Armed Forces from 1962 to 1964, his 1961 certificate of citizenship, his earnings statement listing income for the years 1958 to 1972, and the applicant's mother 1968 birth certificate.

The AAO finds that the evidence in the record demonstrates that the applicant's grandfather was physically present in the United States for five years, two while over the age of 14 (after 1951). 8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. In order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is "probably true" or "more likely than not." *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). The applicant has met her burden of proof and is eligible for citizenship under section 322 of the Act, 8 U.S.C. § 1431. The appeal will therefore be sustained.

ORDER: The appeal is sustained