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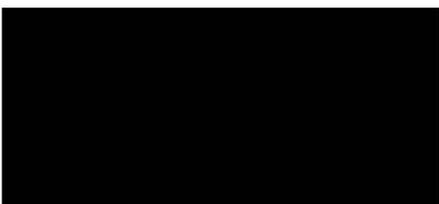
U.S. Department of Homeland Security
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Washington, DC 20529



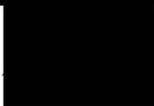
U.S. Citizenship
and Immigration
Services

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EC



FILE:



Office: NEW YORK, NY

Date:

OCT 08 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 black ink, appearing to read "R. P. Wiemann".

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 in Italy on November 4, 2005. The applicant's father is a native-born U.S. citizen, born in New York on June 4, 1968. The applicant's paternal grandfather became a U.S. citizen upon her naturalization on February 15, 1965. 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, claiming to derive U.S. citizenship through her paternal grandfather.

The district director denied the applicant's citizenship claim upon finding that she had failed to provide the requested evidence of her grandfather's physical presence in the United States. The application was accordingly denied.

On appeal, the applicant, through her father, maintains that her grandfather had the required five years of physical presence. The applicant submits additional evidence in support of her claim, including school, insurance and utility receipts dating from 1966 to 1970.

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 the 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 contains, in relevant part, the applicant's birth certificate, the applicant's father's birth certificate, and the applicant's paternal grandfather's certificate of naturalization. The record also includes a copy of receipts dating from 1966 to 1970, an earnings statement indicating that the applicant's grandfather was employed from 1960 to 1970, a copy of the applicant's grandfather's Declaration of Intention dated in 1960, and two letters verifying the applicant's grandfather's employment in 1967 and 1970. Other documents in the record indicate that the applicant's grandfather returned to reside in the United States in the mid-1990s. *See* W-2 Forms, 1995 and 1996.¹

The AAO finds that, based on the evidence in the record, the applicant has met her burden to prove that her paternal grandfather was physically present in the United States for five years, two of which while over the age of 14. Specifically, the school, insurance and utility receipts indicate that the applicant's grandfather was in the United States from 1966 to 1970. The applicant's grandfather's Declaration of Intention and naturalization certificate suggests that he was physically present in the United States from 1960 to 1965. The applicant's father's 1968 birth in the United States indicates that the applicant's grandfather was physically present here at the time. The employment verification letters corroborate the applicant's claim. The record also indicates that the applicant's grandfather returned to the United States in the mid-1990s. The applicant has therefore established, by a preponderance of the evidence, that her grandfather was physically present in the United States as required.

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 met her burden in the present matter. The appeal will therefore be sustained.

ORDER: The appeal is sustained.

¹ The AAO notes that, unlike section 301(g) of the Act, 8 U.S.C. § 1401(g), section 322 of the Act does not specifically require that the parent or grandparent's physical presence be prior to the applicant's birth.