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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: BALTIMORE, MD Date: AUG 19 2008

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under Sections 320 and 322 of the Immigration and Nationality Act; 8 U.S.C. §§ 1431 and 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, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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DISCUSSION: The application was denied by the District Director, Baltimore, Maryland, 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 Pakistan on March 25, 1985, and that he is a citizen of Pakistan. The applicant's father, Iqbal Ahmed Wazir, was born in Pakistan, and he became a naturalized United States (U.S.) citizen on August 22, 1980. The applicant's parents were married on September 10, 1980, and the applicant's mother is not a U.S. citizen. The record reflects that the applicant was admitted into the United States on June 11, 2001, as a B-2 nonimmigrant visitor, and that the applicant's B-2 visa was valid until December 10, 2001. The applicant presently seeks a certificate of citizenship under section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The district director concluded that the applicant was ineligible for U.S. citizenship pursuant to section 320 of the Act, because he did not reside in the United States in the legal and physical custody of his father pursuant to a lawful admission for permanent residence. The district director did not adjudicate the applicant's claim pursuant to section 322 of the Act.

On appeal, the applicant asserts that the district director erroneously applied section 320 citizenship provisions to his case. The applicant asserts that he qualifies for citizenship under section 322 of the Act, and that his citizenship application should have been adjudicated and approved pursuant to section 322 of the Act provisions.

Section 320 of the Act states in pertinent part:

> (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.

The AAO finds that the applicant failed to establish that he is a United States lawful permanent resident, or that he resided in the U.S. in the legal and physical custody of his U.S. citizen father pursuant to a lawful admission for permanent residence. The district director therefore correctly concluded that the applicant does not qualify for citizenship under section 320 of the Act.

Section 322 of the Act applies to children born and residing outside of the United States, and 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;
>
> . . .
>
> (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.

The record in the present case reflects that the applicant was admitted into the United States as a nonimmigrant B-2 visitor on June 11, 2001. The record additionally reflects that the applicant's B-2 visa and the validity of his nonimmigrant status expired on December 10, 2001 Moreover, the record reflects that the applicant has resided in the United States since his admission into the country in June 11, 2001. Accordingly, the AAO finds that the applicant has failed to establish that he resides outside of the United States or that he has maintained a lawful nonimmigrant status, as required by section 322(a)(4) and section 322(a)(5) of the Act. The AAO finds further that, as discussed in the following section, the applicant also failed to establish that his father meets the physical presence requirements as set forth in section 322 (a)(2)(A) of the Act.

The AAO notes that the applicant also does not qualify for derivative U.S. citizenship through his U.S. citizen father [redacted] under section 301(g) of the Act, 8 U.S.C. § 1401(g).

Section 301(g) of the Act provides in pertinent part, that the following shall be nationals and citizens of the United States at birth:

> (g) 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 five years, at least two of which were after attaining the age of fourteen years.

In *Matter of V,* 9 I&N Dec. 558, 560 (BIA 1962), the Board of Immigration Appeals determined that the term "physical presence" meant "continuous physical presence" or "residence" in the United States.

The evidence pertaining to [redacted] physical presence in the United States prior to the applicant's birth consists of the following:

A Divorce Decree reflecting that the applicant's father obtained a divorce from his first wife in the State of Illinois on January 18, 1977;

A Certificate of Naturalization reflecting that the applicant's father became a naturalized U.S. citizen in the State of Washington on August 22, 1980;

A marriage certificate issued in Washington State, reflecting that the applicant's father and mother married in Washington on September 10, 1980;

An August 19, 2002, affidavit written by the applicant's father stating that he was physically present in the United States from 1972 to 1984.

The AAO finds that the above evidence fails to establish that prior to the applicant's birth, his father was 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. The AAO notes that the evidence fails to establish how long the applicant's father was physically present in the United States in 1977 and 1980, and that it fails to establish that Mr was continuously present in the United States for any period of time, as defined in *Matter of V, supra*. The AAO notes further that the affidavit evidence contained in the record lacks basic and material details regarding the exact dates and locations that Mr resided in the United States. Moreover, the record contains no evidence or information to corroborate Mr. general claim that he was physically present in the United States from 1972 to 1984. Accordingly, the AAO finds that the applicant does not meet the requirements for derivative U.S. citizenship under section 301(g) of the Act.

8 C.F.R. § 341.2(c) states that the burden of proof shall be on the claimant to establish claimed citizenship by a preponderance of the evidence. The applicant in the present case has not met his burden. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.