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

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: LOS ANGELES, CA Date: JUL 22 2004

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, Director
Administrative Appeals Office

prevent clearly unwarranted
invasion of personal privacy

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

The record reflects that the applicant was born on July 15, 1990, in Laval, Canada. The applicant's mother was born in New York on January 17, 1961, and she is a United States (U.S.) citizen. The applicant's father has no claim to U.S. citizenship. The applicant's parents married in Canada in July 1985. 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 interim district director determined the applicant was ineligible for U.S. citizenship under section 322 of the Act, because his U.S. citizen mother had not met the physical presence requirements set forth in section 322(a)(2)(A), and because he did not reside outside of the U.S. in the legal and physical custody of his U.S. citizen mother, as required by section 322(a)(4) of the Act. The application was denied accordingly.

On appeal, the applicant, through his mother, asserts that he has complied with the naturalization and immigration visa related requests of Citizenship and Immigration Services (CIS), and that his naturalization application should be approved based on his U.S. citizen grandfather's physical presence in the United States.

Section 322 of the Act 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; 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
> >
> > (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's mother spent most of her life in Canada, and that she resided in the United States for only about one year, in 1961, prior to the applicant's birth in 1990. The applicant's mother therefore does not meet the physical presence requirements set forth in section 322(a)(2)(A) of the Act. The evidence in the record pertaining to the applicant's grandfather's physical presence in the United States consists of his grandfather's birth certificate (reflecting that Alban Ludwig Steigerwald was born in New York on March 23, 1934) and a death certificate (reflecting that Alban Steigerwald died in New York on May 1, 1962). The AAO finds that the evidence presented fails to establish that the applicant's grandfather meets the physical presence requirements set forth in section 322(a)(2)(B) of the Act. In addition, the record reflects that the applicant has resided with his U.S. citizen mother in the United States since July 2, 2002. The applicant therefore also does not meet the residence abroad requirements set forth in section 322(a)(4) of the Act.

The AAO notes further that the applicant does not meet the requirements for U.S. citizenship set forth in section 320 of the Act, 8 U.S.C. §1431. Section 320(a) of the Act states 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.

Although the record reflects that the applicant's mother has filed an application with CIS to obtain lawful permanent resident status for the applicant, the record contains no evidence that the application has been approved or that that applicant has lawful permanent resident status in the United States. The applicant has therefore failed to establish that he meets the requirements for citizenship under section 320(a)(3) of the Act.

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 not met his burden in this case and the appeal will be dismissed.

ORDER: The appeal is dismissed.[1]

[1] The AAO notes that the present appeal is dismissed without prejudice, and that the applicant may reapply for a certificate of citizenship under section 320 of the Act if he obtains lawful permanent residence status in the U.S. prior to his eighteenth birthday, and while residing in the U.S. in the legal and physical custody of his U.S. citizen parent.