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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: MIAMI, FLORIDA Date: MAR 0 9 2004

IN RE: Applica[redacted]

APPLICATION: Application for Certificate of Citizenship pursuant to 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

DISCUSSION: The application was denied by the Acting District Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant was born on March 28, 2000, in Quito, Ecuador. The applicant's father, was born in Ecuador and has no claim to United States (U.S.) citizenship. The applicant's mother, was born in Pasadena, Texas, and is a U.S. citizen. The applicant's parents were married on July 12, 1995. 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 acting district director determined that the applicant was ineligible for U.S. citizenship because his U.S. citizen mother had not met the physical presence requirements set forth in section 322(a)(2)(A) of the Act. The acting district director concluded further that the applicant did not meet the section 322(a)(2)(B) statutory requirements for acquiring citizenship through his U.S. citizen maternal grandfather because his grandfather was deceased when the applicant's N-600 certificate of citizenship application was filed and adjudicated.

On appeal, the applicant, through his mother, asserts that pursuant to guidelines set forth in Supplement A of the N-600, Application for Certificate of Citizenship, the applicant's deceased grandfather meets the requirements set forth in section 322 of the Act, and may transmit U.S. citizenship to the applicant.

Section 322 of the Act, in effect on February 27, 2001, applies to children born and residing outside of the United States. The section provides, in pertinent part that:

> (a) A parent who is a citizen of the United States (or, if the citizen parent has died during the preceding 5 years, a citizen grandparent or citizen legal guardian) 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 (or, at the time of his or her death, was) a citizen of the United States, whether by birth or naturalization.
> >
> > (2) The United States citizen parent--
> >
> > > (A) has (or, at the time of his or her death, had) 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 (or, at the time of his or her death, had) 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 (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 [Secretary] with a certificate of citizenship.

An April 17, 2003, Citizenship and Immigration Services (CIS) Memorandum by the Acting Associate Director, William Yates, acknowledges the ambiguous wording contained in section 322(a)(2)(B) of the Act, and the possibility of an interpretation requiring that the U.S. citizen grandparent be alive at the time of adjudication of a certificate of citizenship application. In order to clarify CIS policy on the issue, the Memorandum states:

> Assuming an alien child meets all other requirements of Section 322, an alien child remains eligible after the death of the citizen parent's own citizen parent, so long as the citizen parent's own citizen parent met the physical presence requirement in Section 322(a)(2)(B) at the time of death.

See HQ 70/34.2-P, Memorandum by William R. Yates, Acting Associate Director, CIS, entitled "Effect of Grandparent's Death on Naturalization under INA Section 322" (April 17, 2003).

The record in the present case reflects that the applicant's mother is a U.S. citizen and that the applicant is under 18 years of age and residing in the legal and physical custody of his mother. The record additionally contains a birth certificate as well as high school, police clearance, life insurance and U.S. military records establishing that the applicant's maternal grandfather, Mr. [redacted] was born in the United States in 1943, and that he lived in the U.S. until at least 1972. Based on this evidence, the AAO finds that Mr. [redacted] met the physical residence requirements set forth in section 322(a)(2)(B) of the Act. Moreover, in accordance with the April 2003, CIS memorandum referred to above, the fact that Mr. [redacted] was deceased when the applicant filed his N-600 certificate of citizenship application does not affect the applicant's eligibility for U.S. citizenship through his maternal grandfather. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.