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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: DETROIT, MI Date: MAR 18 2004

IN RE: Applicant: [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:

[redacted]

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 District Director, Detroit, Michigan, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record indicates that the applicant was born in Pakistan on July 3, 1997. The applicant's father, was born in Pakistan on April 10, 1969, and he became a naturalized United States (U.S.) citizen on August 1, 2002. The applicant's mother was born in Pakistan on July 3, 1974, and she is not a U.S. citizen. The record indicates that the applicant is not a lawful permanent resident in the U.S., and that she was admitted into the United States as a temporary visitor in July 2002, and has not departed the U.S. since that time. The applicant 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 she did not reside in the United States pursuant to a lawful admission for permanent residence. The application was denied accordingly.

On appeal, counsel asserts that the applicant qualifies for U.S. citizenship pursuant to section 322 of the Act.

Section 320 of the Act permits a child born outside of the U.S. to automatically become a citizen of the United States upon fulfillment of the following conditions:

> (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**.

(Emphasis added). The record reflects that the applicant was admitted into the United States as a temporary visitor, and that she has not obtained lawful permanent resident status in the United States. The applicant has therefore failed to establish that she meets the requirements for citizenship set forth in section 320 of the Act.

Section 322 of the Act 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 . . . 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 (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 . . . 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.
>
> (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.

(Emphasis added). The evidence in the record reflects that the applicant was admitted into the United States as a temporary visitor in July of 2002. The AAO notes that there is no evidence in the record to indicate that the applicant has maintained her visitor status in the United States since her July 2002 entry. Moreover, the record reflects that the applicant's U.S. citizen father resides in the United States and that the applicant has resided with him in the U.S. since July 2002. Because the applicant has failed to establish that she is residing outside of the United States in the legal and physical custody of her U.S. citizen father, she is statutorily ineligible for relief under section 322 of the Act. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed. [1]

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[1] The AAO notes that the record contains an unadjudicated Form I-130 Petition for Alien Relative and accompanying Form I-485 Application to Register Permanent Residence or Adjust Status, both received on May 20, 2003, after the filing of the N-600. The present decision is without prejudice to the applicant's filing a new citizenship application under section 320 of the Act, if she obtains lawful permanent resident status in the United States.