U.S. Department of Homeland Security
20 Massachusetts Ave., N.W. Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: NEW YORK, NY Date: OCT 25 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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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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 dismissed.

The record reflects that the applicant was born on January 9, 1998, in Canada. The applicant's mother was born in Ohio on November 4, 1971, 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 on November 23, 1996. The applicant was temporarily admitted into the United States from March 22, 2002 through May 26, 2003, as an R2, child of a religious worker. The applicant did not depart the country in May 2003, and she presently seeks a certificate of citizenship pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The district director determined the applicant was ineligible for U.S. citizenship under section 322 of the Act, because she failed to establish that she resided outside of the U.S. in the legal and physical custody of a citizen parent, as required by section 322(a)(4) of the Act. The application was denied accordingly.

On appeal, the applicant asserts the evidence in the record establishes that her U.S. citizen, maternal grandmother meets physical presence requirements set forth in section 322(a)(2)(B) of the Act, and that the applicant qualifies for citizenship under section 322 of the Act.

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 matter reflects that the applicant was admitted into the United States in March 2002, and that she has resided in the United States with her U.S. citizen mother since that time. The applicant therefore does not meet the section 322(a)(4) of the Act requirement that she reside outside of the U.S. in the legal and physical custody of her citizen parent. Because the applicant has failed to establish that she meets the residence abroad requirements contained in section 322(a) of the Act, the AAO finds it unnecessary to address whether the applicant's maternal grandmother meets the U.S. physical presence requirements set forth in section 322(a)(2)(B) of the Act.

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

The record contains no evidence to demonstrate that the applicant was admitted into the U.S. as a lawful permanent resident, or that she has at any time obtained lawful permanent resident status in the United States.

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 her burden. The appeal will therefore be dismissed.[1]

ORDER: The appeal is dismissed.

[1] The AAO notes that the present decision is without prejudice, and that the applicant may reapply for a certificate of citizenship if and when she meets the necessary requirements.