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

U.S. Citizenship and Immigration Services

E1

[redacted]

FILE: [redacted] Office: NEWARK, NEW JERSEY Date: SEP 01 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

DISCUSSION: The application was denied by the District Director, Newark, New Jersey, 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 December 6, 2000, in Italy. The applicant's mother was born in Maryland on September 3, 1975, and she is a United States (U.S.) citizen. The applicant's father has no claim to U.S. citizenship. The applicant presently seeks a certificate of citizenship pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The director determined that the applicant was ineligible for U.S. citizenship under section 322 of the Act because her mother did not meet the physical presence requirements set forth in section 322(a)(2)(A) of the Act. The director determined further that the applicant had failed to establish that she was admitted into the U.S. pursuant to a lawful admission, or that she resided outside of the U.S. in the legal and physical custody of her U.S. citizen mother, as required by sections 322(a)(4) and 322(a)(5) of the Act. The application was denied accordingly.

On appeal, the applicant, through her mother, indicates that although her Italian passport contains no evidence of a lawful entry into the U.S., she was admitted into the U.S. by an immigration officer at the Philadelphia International Airport in order to pursue her U.S. citizenship claim with Citizenship and Immigration Services (CIS). The applicant asserts further that she has complied with the requirements for citizenship and that her application should be approved.

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 contains no evidence to establish that the applicant's mother meets the U.S. physical presence requirements contained in section 322(a)(2)(A) of the Act.

The AAO notes that the record additionally reflects that the applicant has resided with her U.S. citizen mother in the United States since December 2001, and the record contains no documentary evidence to support the assertion that the applicant entered the U.S. temporarily, pursuant to a lawful admission, or that she is presently maintaining such lawful status. Accordingly, the applicant does not meet the residence abroad requirements set forth in section 322(a)(4) of the Act. Nor does she meet the lawful admission and maintenance of lawful status requirements set forth in section 322(a)(5) of the Act. Thus, the applicant also does not qualify to derive U.S. citizenship through her U.S. citizen grandfather as set forth in section 322(a)(2)(B) of the Act.

The AAO additionally notes 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 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.

The record does not reflect that the applicant's mother has applied for lawful permanent resident status on behalf of the applicant, or that the applicant has otherwise obtained lawful permanent resident status in the United States. The applicant therefore does not meet the requirements for citizenship as set forth in 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 her burden in this case. The appeal will therefore 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 she obtains lawful permanent residence status in the U.S. prior to her eighteenth birthday, and while residing in the U.S. in the legal and physical custody of her U.S. citizen parent.