U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

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FILE: [redacted] Office: LOS ANGELES, CA Date: JUN 09 2004

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under Sections 320 and 322 of the Immigration and Nationality Act; 8 U.S.C. §§ 1431 and 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 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 nd that she is a citizen of India. The applicant's fathe born in India o he became a naturalized United States (U.S.) citizen The record indicates that the applicant's mother was born that she is not a U.S. citizen. The applicant's parents did not marry. The record reflects that the applicant was admitted into the United States on as a B-2 nonimmigrant visitor. She seeks a certificate of citizenship under sections 320 and 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1431 and 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 in the legal and physical custody of her father pursuant to a lawful admission for permanent residence. The district director did not adjudicate the applicant's claim pursuant to section 322 of the Act.

On appeal, counsel asserts that the district director erroneously applied section 320 citizenship provisions to the applicant's case. Counsel asserts that instead, the applicant qualifies for citizenship under section 322 of the Act, and that her citizenship application should have been adjudicated and approved pursuant to section 322(a) of the Act.

Section 320 of the Act states in pertinent part:

> (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 AAO finds that the district director correctly concluded that the applicant had failed to establish she resided in the U.S. in the legal and physical custody of her U.S. citizen father pursuant to a lawful admission for permanent residence. The applicant therefore does not qualify for citizenship under section 320 of the Act.

Section 322 of the Act applies to children born and residing outside of the United States, and 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;
>
> . . .
>
> (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 father resides in the United States and that he has resided continuously in [redacted] *See* Form N-600, Application for Certificate of Citizenship. The applicant has therefore failed to establish that she resided outside of the U.S. in the legal and physical custody of her U.S. citizen father as required by section 322(a)(4) of the Act.

8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. Based on the above evidence, the applicant has failed to establish that she qualifies for a certificate of citizenship under sections 320 and 322 of the Act. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.