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

U.S. Citizenship and Immigration Services

[redacted]

E6

FILE: [redacted] Office: PHOENIX, AZ Date: JAN 10 2005

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:

[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, Phoenix, Arizona, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Colombia on May 8, 1993. The applicant's Form N-600, Application for Citizenship, reflects that the applicant's mother is and that she is a Peruvian citizen. The applicant claims that he was adopted in Colombia by a U.S. citizen, in 1994. The record reflects that the applicant was admitted into the United States on August 27, 2003, as a K-4 nonimmigrant visa holder, and that his nonimmigrant status is valid through August 26, 2005. 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 district director determined that the applicant was ineligible for citizenship under section 322 of the Act because he did not reside outside of the United States in the legal and physical custody of his U.S. citizen parent, as required by section 322(a)(4) of the Act. The application was denied accordingly.

On appeal, counsel asserts that the applicant's physical presence in the U.S. does not, in and of itself, establish that the applicant resides in the United States. Counsel asserts further that the applicant's permanent residential address is located in and that he therefore meets the foreign residence requirements set forth in 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 AAO notes that although a stepchild qualifies as a "child" under section 101(b)(1)(B) of the Act, 8 U.S.C. § 1101(b)(1)(B), for nonimmigrant and immigrant visa Title I and Title II of the Act purposes, a stepchild is not included in the definition of a "child" for section 101(c)(1) of the Act, Title III naturalization and citizenship purposes. Rather, under section 101(c) of the Act, a U.S. citizen parent cannot obtain citizenship for a stepchild unless the parent legally adopts the child and presents, amongst other things, proof of such adoption prior to the child's 16th birthday. The present record does not contain a birth certificate or adoption decree for the applicant, nor does the evidence in the record establish in any other way that the applicant is the "child" of The AAO therefore finds that, based on the evidence in the record, the applicant has failed to establish that he is a "child" for purposes of section 101(c) or section 322 of the Act.

Furthermore, the AAO finds that even if the applicant had established that he was legally adopted by and that he met the definition of "child" as set forth in the Act, the applicant would nevertheless remain ineligible for citizenship under section 322 of the Act based on his failure to meet foreign residence requirements set forth in section 322(a)(4) of the Act.

Counsel asserts that the applicant's permanent residential address is located on and that the applicant therefore meets section 322(a)(4) foreign residence requirements. The AAO finds counsel's assertion to be without merit.

Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33), states that, "[t]he term "residence" means the place of general abode; the place of general abode of a person means his **principal, actual dwelling place in fact, without regard to intent**." (Emphasis added). The Board of Immigration Appeals additionally clarified in, *Matter of Jalil,* 19 I&N Dec. 679 (BIA 1988), that the maintenance of financial interests, the retention of a house, or the intention to return to another home does not establish a person's "dwelling place in fact" for purposes of section 101(a)(33) of the Act.

The present record contains no evidence to establish that Jeffrey White or the applicant reside in Peru. To the contrary, the evidence in the record reflects that the applicant and have lived in Chandler, Arizona since the applicant's admission into the United States in August 2003. Accordingly, the AAO finds that Arizona is the applicant's "actual principal dwelling place in fact". The applicant therefore does not meet the section 322(a)(4) of the Act requirement that he reside outside of the U.S. in the legal and physical custody of a citizen parent.

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 he qualifies for a certificate of citizenship under section 322 of the Act. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.