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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

E6

[redacted]

FILE: [redacted] Office: EL PASO, TX Date: JAN 12 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:

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, El Paso, Texas, 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 Mexico on September 11, 2000. The applicant's father, [redacted] was born in Mexico and he became a naturalized U.S. citizen on January 24, 1996. The applicant's mother [redacted] was born in Mexico, and she is not a U.S. citizen. The record reflects that the applicant's parents married in Mexico on January 3, 2003. The applicant was admitted into the United States as a K-4 nonimmigrant visa holder on May 28, 2003. 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 concluded that the applicant had failed to establish he resided outside of the United States in the physical custody of his U.S. citizen father as required by section 322 of the Act. The application was denied accordingly.

On appeal, the applicant, through his father, asserts that although the applicant was present in the United States for purposes of his citizenship interview, the applicant does not live in the U.S. and instead resides with his mother in Mexico. The applicant asserts that he is therefore eligible for citizenship under section 322 of the Act.

Section 322 of the Act applies to children born and residing outside of the United States and states, 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 evidence in the record reflects that the applicant's father resides in the United States and that the applicant resides in the physical custody of his non-citizen mother in Mexico. The applicant thus does not meet the section 322(a)(4) requirement that he reside outside of the U.S. in the physical custody of his U.S. citizen parent. Accordingly, the applicant does not qualify for citizenship under section 322 of the Act

The AAO notes that the applicant also does not qualify for citizenship under 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 applicant has failed to establish that he resides in the United States with his U.S. citizen father or that he has been admitted into the U.S. pursuant to a lawful admission for permanent residence.

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. *See also* § 341 of the Act, 8 U.S.C. § 1452. The applicant has not met his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.