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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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FILE:

Office: LOS ANGELES Date:

MAR 20 2009

IN RE:

APPLICATION: Application for Certificate of Citizenship under Section 322 of the Immigration and Nationality Act; 8 U.S.C. § 1433.

ON BEHALF OF APPLICANT:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Los Angeles, California. The matter 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 18, 2005. The applicant's father, [REDACTED] was born on August 6, 1952 in El Salvador and became a naturalized U.S. citizen on August 8, 1990. The applicant's mother, [REDACTED] was born in and resides in Mexico. She is not a U.S. citizen. The record reflects that the applicant's parents have never been married. The record shows that the applicant's father has been married to [REDACTED] since December 16, 1989. The applicant filed an Application for Citizenship and Issuance of Certificate under Section 322 (Form N-600K) seeking a certificate of citizenship pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The field office director found the applicant had failed to establish that he was residing outside the United States in the physical custody of the United States citizen parent, who resides in California, as required by section 322(a)(4) of the Act. The application was denied accordingly.

On appeal, counsel contends that the applicant has met the requirements for citizenship under section 301(g) of the Act. Counsel asserts that the applicant has met the additional requirements for children born out of wedlock in section 309 of the Act, and describes the evidence submitted by the applicant to meet these requirements.

The evidence submitted includes a sworn declaration from the applicant's father, in which he acknowledges his paternity and agrees to continue financially supporting the applicant until he turns 18 years of age; a sworn declaration from the applicant's mother in which she attests that she lives in Mexico, that the applicant's father was present for the applicant's birth and baptism, and that he financially supports the applicant; and utility, insurance and financial records demonstrating the applicant's father's presence in the United States from 1992 to 2007.

Section 309 of the Act states in pertinent part:

(a) The provisions of paragraphs (c), (d), (e), and (g) of section 301 . . . shall apply as of the date of birth to person born out of wedlock if—

(1) a blood relationship between the person and the father is established by clear and convincing evidence,

(2) the father had the nationality of the United States at the time of the person's birth,

(3) the father (unless deceased) has agreed in writing to provide financial support for the person until the person reaches the age of 18 years, and

(4) while the person is under the age of 18 years—

(A) the person is legitimated under the law of the person's residence or domicile,

(B) the father acknowledges paternity of the person in writing under oath, or

(C) the paternity of the person is established by adjudication of a competent court.

Section 301 of the Act provides, in pertinent part, that the following shall be nationals and citizens of the United States at birth:

(g) A person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was 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

The evidence in the record meets the requirements of sections 301(g) and 309(a) of the Act. Accordingly, the applicant is a citizen of the United States and is entitled to receive a certificate of citizenship.

However, the applicant must file a Form N-600, Application for Certificate of Citizenship, to obtain this certificate. 8 C.F.R. § 341.1 states, in pertinent part, that "[a]n application for a certificate citizenship . . . under section 341 of the Act shall be submitted on Form N-600. . . ." Section 341 of the Act states, in pertinent part:

a person . . . who is a citizen of the United States by virtue of the provisions of . . . paragraph (c), (d), (e), or (g) of section 301 of this title . . . may apply to the Attorney General [Secretary of Homeland Security] for a certificate of citizenship.

Because the applicant filed Form N-600K rather than Form N-600, the appeal cannot be sustained. However, as stated above, based on the evidence in the record, the applicant will be entitled to a certificate of citizenship if he properly files a Form N-600.

8 C.F.R. § 341.2(c) states that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. The applicant has not met his burden in the present matter. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.