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

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[redacted]

FILE: [redacted] Office: NEW YORK, NY Date: MAR 3 0 2007

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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will be denied.

The record reflects that the applicant was born in Israel on January 31, 1991, and that she was adopted by her stepfather, [redacted] on November 27, 1995. [redacted] became a naturalized U.S. citizen on February 9, 1956. The applicant asserts that she is entitled to U.S. citizenship through her adoptive father.

The district director determined that the applicant had failed to provide acceptable proof of her legal adoption by [redacted] The application was therefore denied based on lack of prosecution. The AAO notes, however, that the record at the time of the district director's denial included the document he indicated had not been provided by the applicant. Accordingly, it will consider whether the applicant is eligible for a certificate of citizenship based on the 1956 naturalization of her adoptive father.

On appeal the applicant asserts, through [redacted], that she submitted competent and certified translations of her Israeli adoption decree, and the applicant asks that her Form N-643, Application for Certificate of Citizenship in Behalf of an Adopted Child (Form N-643) be approved.

Section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433, applies to children born and residing outside of the United States, and provides 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 shall issue a certificate of citizenship to such applicant upon proof, to the satisfaction of the Attorney General, 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 [citizen parent] (or, if the citizen parent is deceased, an individual who does not object to the application).

> (5) The child is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.
>
> (b) Upon approval of the application (which may be filed from abroad) and, except as provided in the last sentence of section 337(a), upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this Act of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the Attorney General with a certificate of citizenship.
>
> (c) Subsections (a) and (b) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1). [1]

The record contains [redacted]'s 1956, Certificate of Naturalization, and naturalization application materials reflecting his physical presence in the United States. Based on this evidence, the AAO finds that [redacted] satisfies the U.S. citizenship and physical presence requirements contained in section 322(a)(1) and (2) of the Act.

The record additionally contains a translated Israeli birth certificate for the applicant. 8 C.F.R. § 103.2(b)(3) provides that:

> Any document containing foreign language submitted to the Service shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

The applicant's Israeli birth certificate is accompanied by an August 19, 1996, Translator's Affidavit in which the applicant's adoptive father, [redacted] certifies his competence to translate in the Hebrew and English languages to [redacted], Consul of the United States of America at Jerusalem, Israel. The affidavit is signed by [redacted] and [redacted] The AAO notes that 8 C.F.R. §103.2(b)(3) does not specify or limit who can translate foreign documents for immigration application purposes. Because the translator's affidavit was certified as competent before the U.S. Consul, the AAO finds that the translated birth certificate meets translation requirements as set forth in 8 C.F.R. § 103.2(b)(3). The applicant's translated birth certificate reflects that the applicant was born in Israel on January 31, 1991. She is thus presently seventeen years old. Accordingly, the applicant has established that she meets the requirement set forth in section 322(a)(3) of the Act, which states that she must be a child under the age of eighteen.

In order to satisfy the requirements of section 322(a)(4) of the Act, the applicant must establish that she resides outside of the United States in the legal and physical custody of her citizen father. Legal custody vests "by virtue of either a natural right or a court decree." *See Matter of Harris,* 15 I&N Dec. 39 (BIA 1970). 8 C.F.R. § 322.3(b)(1)(ix) provides that for section 322 of the Act purposes, an applicant that has been

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[1] Section 101(b)(1)(E)(i) of the Act, 8 U.S.C. §1101(b)(1)(E)(i) provides that:

> As used in titles I and II . . . [t]he term "child" means an unmarried person under twenty-one years of age who is . . . a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years: Provided, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act

adopted must provide a copy of a full, final adoption decree. As previously noted, the record contains an Israeli adoption decree translated by [redacted] reflecting that on November 27, 1995, the applicant was legally adopted by [redacted]. The translated adoption decree is accompanied by an August 19, 1996, Translator's Affidavit, in which [redacted] certifies his competence to translate in the Hebrew and English languages to [redacted] Consul of the United States of America at Jerusalem, Israel. The affidavit is signed by [redacted] and [redacted] and the AAO finds that the translated adoption decree meets the translation requirements contained in 8 C.F.R. § 103.2(b)(3). Accordingly, the applicant has established that [redacted] has legal custody over her. The AAO notes, however, that although the Form N-643 contained in the record indicates that the applicant resides in Israel and [redacted] asserts he currently resides in Israel, the record lacks evidence of his place of residence. The applicant has thus failed to establish that she resides in the physical custody of [redacted], as required by section 322(a)(2)(4) of the Act.

The applicant has also failed to establish that she satisfies the requirements set forth in section 322(a)(5) of the Act, which state that the child is temporarily present in the U.S. pursuant to a lawful admission, and is maintaining such lawful status. An HQISD 70/33, INS Memorandum by William R. Yates, Deputy Executive Associate Commissioner, INS, entitled *Implementation Instructions for Title I of the Child Citizenship Act of 2000* (February 26, 2001) provides that:

> Under section 322 of the Act a foreign-born child who resides outside the United States must be lawfully admitted to the United States and maintain such lawful status until the application for certificate of citizenship is approved and the oath of allegiance administered . . . . A child may be admitted in any nonimmigrant classification. A child is considered to have maintained lawful status if his or her nonimmigrant classification has not been revoked or has not expired by operation of law.

The regulation at 8 C.F.R. § 322.4 provides further that, "the U.S. parent and the child shall appear in person before the Service officer for examination on the application for certificate of citizenship." In the present matter, there is no evidence in the record to indicate that the applicant was lawfully admitted into the U.S. at any time, or that she has ever maintained a temporary lawful status in the United States or appeared before an officer for certificate of citizenship examination purposes. The applicant thus failed to meet the requirements set forth in 8 C.F.R. § 322.4 and section 322(a)(5) of the Act.

The AAO additionally notes that the record contains no evidence to establish that the applicant has resided in the U.S. pursuant to a lawful admission for permanent residence. The applicant has therefore failed to establish that she is entitled to U.S. citizenship pursuant to section 320 of the Act, 8 U.S.C. § 1431, which applies to a child born abroad who resides in the United States, and 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.

> (b) Subsection (a) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

The AAO further finds that the applicant has failed to establish that she is entitled to U.S. citizenship pursuant to section 301(g) of the Act, 8 U.S.C. § 1401(g)), which states in pertinent part that:

> The following shall be nationals and citizens of the United States at birth: . . . a person born outside the geographical limits of the United States . . . 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 . . . 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 statutory language contained in section 301 of the Act, "[r]equires that the child be born of a United States citizen. There is no indication that this section applies to an adopted child." *See Matter of Rodriguez-Tejedor,* 23 I&N Dec. 153 (BIA 2001).

The regulation at 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 failed to meet her burden in the present matter. The appeal will therefore be dismissed, and the applicant denied.

ORDER: The appeal is dismissed. The application is denied.