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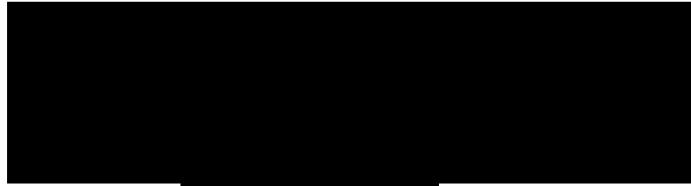
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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Services

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FILE:

Office: HOUSTON, TX

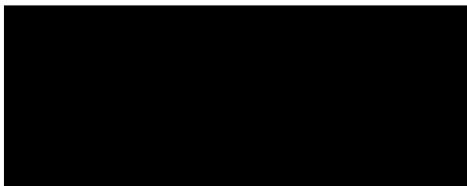
Date: OCT 31 2007

IN RE:

Applicant:

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.

Robert P. Wiemann

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Houston, 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 August 15, 1985. The applicant's mother, Refugia Cruz, is a citizen of Mexico. The applicant's father, [REDACTED] became a naturalized U.S. citizen on September 2, 1999. The applicant resides with his mother in Mexico. The applicant's father resides in Texas. The applicant 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 had failed to establish that he was residing outside the United States in the legal and physical custody of a U.S. citizen parent. The district director therefore found that he was ineligible for citizenship and denied the application accordingly.

On appeal, the applicant claims that the Act "does not require that the beneficiary be living in the United States." The applicant indicates that a brief or additional evidence would be submitted within 30 days. On October 15, 2007, the AAO sent a fax to applicant's counsel advising him that no evidence or brief had ever been received in this matter, and requesting that counsel submit a copy of the *originally submitted* brief and/or additional evidence, if in fact such evidence had been submitted, within five business days. Counsel responded by fax the same day indicating that no brief or additional evidence had been submitted.

Section 322 of the Act, 8 U.S.C. § 1433, was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA benefits all persons who have not yet reached their 18th birthdays as of February 27, 2001. Because the applicant was under the age of 18 on February 27, 2001, he meets the age requirement for benefits under the CCA.

Section 322 of 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).

In order to satisfy the requirements of section 322(a)(4) of the Act, the applicant must establish that he resides *outside of the United States in the legal and physical custody of his U.S. citizen parent*. The AAO notes that by the applicant's own statements in the Form N-600, Application for Certificate of Citizenship, he is not residing with his U.S. citizen parent. The record clearly indicates that the applicant's father resides in the United States, and the applicant resides in Mexico. The applicant is not in the physical custody of his U.S. citizen parent. The AAO must conclude that the applicant cannot establish eligibility for citizenship under section 322(a)(4) of the Act because he is not residing outside the United States in the physical custody of his U.S. citizen parent.

Section 322(a)(3) of the Act, 8 U.S.C. § 1433(a)(3), requires that a certificate of citizenship application be filed, adjudicated, and approved with the oath of allegiance administered before the child's 18th birthday. *See also* 8 C.F.R. § 322.2(a)(3). The AAO therefore finds that the applicant is ineligible for citizenship under the cited provision because he is already 18 years old.

The AAO notes that the applicant is also ineligible for citizenship under section 320 of the Act, 8 U.S.C. § 1431, because he was not admitted for lawful permanent residence before turning 18 years old.¹

¹ Section 320 of the Act, 8 U.S.C. § 1431, provides, 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 requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and CIS lacks statutory authority to issue a Certificate of Citizenship when an applicant fails to meet the relevant statutory provisions set forth in the Act. A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 885 (1988). Even courts may not use their equitable powers to grant citizenship, and any doubts concerning citizenship are to be resolved in favor of the United States. *Id.* at 883-84; *see also United States v. Manzi*, 276 U.S. 463, 467 (1928) (stating that "citizenship is a high privilege, and when doubts exist concerning a grant of it ... they should be resolved in favor of the United States and against the claimant"). Moreover, "it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect." *Berenyi v. District Director, INS*, 385 U.S. 630, 637 (1967).

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 his burden in the present matter. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.