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

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[redacted]

FILE: [redacted] Office: CHICAGO, IL Date: MAR 07 2008

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship pursuant to section 322 of the former 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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Chicago, Illinois. The matter is now before the AAO on appeal. The appeal will be dismissed and the application denied.

The applicant was born in Hong Kong on December 29, 1987. The record reflects that the applicant was legally adopted by [redacted] and [redacted] on February 11, 1997, when he was nine years old. The applicant's adoptive mother, [redacted] became a naturalized U.S. citizen on November 23, 1996. The record contains no citizenship information for the applicant's adoptive father. The applicant was admitted into the United States pursuant to a temporary B2 nonimmigrant visa on July 13, 1996. He remained in the United States, and his nonimmigrant visa was extended through July 12, 1997. The record contains no evidence to indicate that the applicant was in legal nonimmigrant or immigrant status after July 12, 1997. The applicant seeks a certificate of citizenship pursuant to section 322 of the former Act (the former Act), 8 U.S.C. §1433.[1]

The district director determined that the applicant had failed to meet the "physically present in the United States pursuant to a lawful admission" requirement set forth in section 322(a)(2) of the former Act. The applicant's Form N-643, Application for Certificate of Citizenship on Behalf of Adopted Child (Form N-643 Application) was denied accordingly.

Through counsel, the applicant asserts that he was admitted into the U.S. pursuant to a lawful admission and that, although his nonimmigrant status expired on July 12, 1997, the statutory provisions of section 322 of the former Act do not require him to maintain a lawful nonimmigrant or immigrant status for citizenship purposes.

Section 322 of the former Act provided that:

> (a) [A] parent who is a citizen of the United States may apply to the Attorney General [now the Secretary, Homeland Security, "Secretary"] for a certificate of citizenship on behalf of a child born outside the United States. The Attorney General [Secretary] shall issue such a certificate of citizenship upon proof to the satisfaction of the Attorney General [Secretary] that the following conditions have been fulfilled:
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> 1) At least one parent is a citizen of the United States, whether by birth or naturalization.
> 2) The child is physically present in the United States pursuant to a lawful admission.
> 3) The child is under the age of 18 years and in the legal custody of the citizen parent.
> 4) If the citizen parent is an adoptive parent of the child, the child was adopted by the citizen parent before the child reached the age of 16 years (except to the extent that the child is described in clause (ii) of

[1] Section 322 of the former Act was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The provisions of the CCA are not retroactive. *See Matter of Rodriguez-Tejedor,* 23 I&N Dec. 153 (BIA 2001.) In the present matter, the applicant's Form N-643 application was filed on August 11, 1999, and the district director rendered a decision on February 26, 2001, prior to the CCA's effective date. The applicant's eligibility for citizenship under the Act, as amended may thus not be considered.

subparagraph (E) or (F) of section 1101(b)(1) of this title) and the child meets the requirements for being a child under either of such paragraphs.

5) If the citizen parent has not 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-

(A) the child is residing permanently in the United States with the citizen parent, pursuant to a lawful admission for permanent residence, or

(B) a citizen parent of the citizen parent 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.

b) Attainment of citizenship status; receipt of certificate

Upon approval of the application . . . [and] upon taking and subscribing before an officer of the Service [CIS] within the United States to the oath of allegiance required by this chapter of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the Attorney General [Secretary] with a certificate of citizenship.

c) Adopted children
Subsection (a) of this section shall apply to the adopted child of a United States citizen adoptive parent if the conditions specified in such subsection have been fulfilled.

Under section 101(b)(1) of the former Act, 8 U.S.C. § 1101(b)(1):

[T]he term "child" means an unmarried person under twenty-one years of age who is –

. . . .

(E)(i) 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.

The record reflects that the applicant was adopted by his U.S. citizen mother on February 11, 1997, at the age of nine, and that he resided in the legal custody of his adoptive mother for over two years. The applicant thus qualified as a child under section 101(b) of the former Act, at the time of the district director's decision, and prior to his eighteenth birthday. The applicant also established that the requirements set forth in section 322(a)(1) and (a)(4) of the former Act have been met. Moreover, U.S. naturalization evidence and U.S. employment letter contained in the record establish by a preponderance of the evidence that the applicant's U.S. citizen mother was physically present in the U.S. for at least five years prior to the applicant' adoption. The requirements set forth in section 322(a)(5) of the former Act have thus also been met. The applicant has failed, however, to establish that he met the requirements set forth in section 322(a)(2) of the former Act.

Counsel for the applicant asserts that section 322(a)(2) of the former Act does not explicitly state that maintaining lawful status is a condition that must be fulfilled in order to meet section 322(a)(2) of the former Act criteria for U.S. citizenship. Counsel states that the applicant was lawfully admitted into the United States as a B2 nonimmigrant visa holder, and counsel asserts that, "even though the Applicant may not be in legal status, he is physically present in the United States pursuant to a lawful admission" and thus meets the statutory requirements of section 322(a)(2) of the former Act.

The AAO notes that counsel provides no legal support for his assertions on appeal. Moreover, counsel's assertions are countered by clarifying provisions contained in the Code of Federal Regulations, as in effect on January 1, 1998 through January 1, 2001, which provided in pertinent part at section 322.2(a) that:

> [T]o be eligible for naturalization under section 322 of the [former] Act, a child on whose behalf an application for naturalization has been filed by a parent who is, at the time of filing, a citizen of the United States, must:
>
> . . .
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> 2) Reside permanently in the United States, in the physical and legal custody of the applying citizen parent pursuant to a lawful admission for permanent residence . . . .

The regulation at 8 C.F.R. § 322.4(b), as in effect on January 1, 1998 through January 1, 2001, provided further that:

> The application must be accompanied by proof of:
>
> 1) The child's admission for lawful permanent residence . . . .

The evidence in the record reflects that the applicant was admitted into the U.S. on July 13, 1996, with a B2 nonimmigrant visitor visa. There is no evidence to indicate that the applicant was admitted into the United States pursuant to a lawful admission for permanent residence. The record additionally contains no evidence to establish that the applicant's status was adjusted to that of a lawful permanent resident subsequent to his admission into the United States. Accordingly, the applicant failed to satisfy the requirements set forth in section 322(a)(2) of the former Act, as clarified by the provisions contained in the regulations.

In addition, the applicant failed to satisfy the oath requirements contained in section 322(b) of the former Act, prior to his eighteenth birthday.

The regulation at 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. In the present matter, the applicant failed to satisfy the conditions set forth in section 322(a)(2) and (b) of the former Act. The applicant is therefore ineligible for citizenship under section 322 of the former Act. The appeal will therefore be dismissed and the application will be denied.

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