



U.S. Citizenship
and Immigration
Services

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EG

[REDACTED]

FILE:

Office: NEW YORK, NY

Date: **MAY 21 2008**

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 record reflects that the applicant was born in Pakistan on March 2, 1986. The applicant's father is a U.S. citizen by virtue of his naturalization on January 4, 2002, when the applicant was fifteen years old. The applicant's mother passed away in 1994. The applicant was admitted to the United States as a lawful permanent resident on January 16, 2003, when he was 16 years old. 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, claiming to derive U.S. citizenship through his father.

The district director denied the applicant's citizenship claim upon finding that he had failed to provide evidence of his residence. The application was accordingly denied.

On appeal, the applicant, through his father, maintains that he submitted evidence demonstrating his residence in Pakistan. The evidence includes his grandmother's declaration and school verification letters establishing he resided in Pakistan in June 2003.

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).

The AAO notes that the applicant turned 18 years of age on March 2, 2004. As such, he can no longer qualify for benefits under section 322 of the Act, 8 U.S.C. § 1433. Section 322(a)(3) of the Act, 8 U.S.C. § 1433(a)(3), and the regulations promulgated thereunder, require that a certificate of citizenship application be filed, adjudicated, and approved with the oath of allegiance administered before the applicant's 18th birthday. The applicant is over the age of 18. The AAO therefore finds that the applicant is ineligible for citizenship under this provision.

The AAO nonetheless notes that the record contains a copy of the applicant's U.S. passport. In accordance with *Matter of Villanueva*, 19 I&N Dec. 101 (BIA 1984), a valid U.S. passport constitutes conclusive proof of a person's U.S. citizenship and may not be collaterally attacked. The AAO finds that the applicant may have automatically acquired U.S. citizenship upon his admission to the United States as a lawful permanent resident, pursuant to section 320 of the Act, 8 U.S.C. § 1431.

Section 320 of the Act, 8 U.S.C. § 1431, 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 record at this time, however, does not demonstrate, by a preponderance of the evidence, that the applicant was residing in the United States in his father's physical custody as required by section 320(a)(3) of the Act, 8 U.S.C. § 1431(a)(3). 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). 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). Thus, a certificate of citizenship cannot be issued at this time because the record only contains evidence that the applicant was residing, as of June 2003, in Pakistan with his grandmother, and not in the physical custody of his father in the United States.

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. In order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is "probably true" or "more likely than not." *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). The applicant has not met his burden in the present matter. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.