

identifying data deleted to
prevent disclosure of information
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



EI

JUN 14 2005

FILE: [REDACTED] Office: NEW YORK, NEW YORK Date:

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under § 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, Director
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 outside the United States on March 25, 2002. The applicant's parents adopted her on April 16, 2001. The applicant's adoptive father (father) was born in the United Kingdom, and he derived U.S. citizenship from his father, who became a naturalized U.S. citizen at the age of seventeen. The applicant's adoptive mother is not a U.S. citizen. The applicant's parents are married. The applicant resides in the United Kingdom with her U.S. citizen father, and she has not been admitted into the United States. She seeks a certificate of citizenship pursuant to § 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The district director concluded the applicant had failed to establish that her grandfather had been physically present in the United States for the statutorily required period of time. The district director also noted that the evidence on the record did not include a certificate of U.S. citizenship issued in the applicant's grandfather's own name. The application was denied accordingly.

On appeal, the applicant's father asserts that his father, the applicant's grandfather, was physically present in the United States for over five years, as required by § 322, discussed below. On behalf of the applicant, the applicant's father requests 120 days in which to gather further evidence regarding his father's physical presence in the United States. The date of the request, as shown on the Form I-290B, was December 17, 2004. As of this date, the AAO has not received any additional documentation related to this matter; therefore, the record is complete. Nevertheless, the AAO has reviewed the entire record and finds that the evidence on the record is sufficient to establish the required physical presence element.

On appeal, the applicant's father submits copies of his father's U.S. passports. The record also contains copies of U.S. naval and coast guard discharge papers for the applicant's grandfather, and a copy of the applicant's great grandfather's naturalization certificate, listing her grandfather as a minor child included in the procedure. The AAO concurs with the applicant's father's assertions that the evidence on the record establishes that the applicant's grandfather was a naturalized U.S. citizen.

Section 322 of the Act applies to children born and residing outside of the United States and states, in pertinent part, 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 [now Secretary, Homeland Security "Secretary"] shall issue a certificate of citizenship to such applicant upon proof, to the satisfaction of the Attorney General [Secretary], 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

(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 [now Citizenship and Immigration Services, "CIS"] 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 [Secretary] 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).

Section 101(b)(1)(E) of the Act states, in pertinent part, that the term "child" means an unmarried person under twenty-one years of age who is-

(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: 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. . . .

The evidence on the record establishes that the applicant's grandfather was physically present in the United States or its outlying possessions for a total period of five years, at least two of which were after he turned fourteen in 1924, as required by § 322(a)(2)(B) of the Act. On the Form N-600K, the applicant indicated that her grandfather was physically present in the United States from 1920 to 1952. Documentation on the record, such as the applicant's great grandfather's January 1921 Declaration of Intention shows that the applicant's great grandparents arrived in the United States in December 1920, supporting the claim that her grandfather, who would have been ten years old, also arrived at that time.

The record contains the following evidence regarding the applicant's grandfather's physical presence in the United States:

- The applicant's great grandfather's petition for naturalization, dated June 3, 1927, indicating that her grandfather, aged seventeen, resided with the applicant's great grandfather;
- The applicant's great grandfather's certificate of naturalization, dated September 6, 1927, indicating that the applicant's grandfather resided with the applicant's great grandfather;
- A letter dated May 23, 1976 from Professor [REDACTED] who wrote that the applicant's grandfather had been his friend and classmate at City College of New York from 1927 to 1929;
- A statement of earnings from an accountant for the year 1948;
- A utility deposit dated December 13, 1949;

- A homeowner's insurance policy dated March 1, 1949 indicating the applicant's grandfather's address in New York; and
- W-2 tax forms for 1949 and 1950 and a Form 1040A for 1950.

It is reasonable to conclude that the applicant's U.S. citizen grandfather began his physical presence in the United States in December 1920. The record contains primary evidence demonstrating that he was present in this country at least as early as June 1927, when he was seventeen years old. The evidence also establishes at least two years' physical presence from 1927 to 1929, and three years' presence from 1948 to 1950. The AAO notes that the applicant's grandfather's active U.S. military duty outside the United States would have constituted physical presence for the purposes of her father's acquisition of U.S. citizenship at birth, but § 322 of the Act contains no military duty proviso. Nevertheless, the applicant has established the minimum five years' physical presence, at least two of which occurred after her grandfather's fourteenth birthday, in compliance with § 322(a)(2)(B) of the Act.

The applicant has also established that she qualifies as a child under § 101(b)(1)(E) of the Act. The record, however, does not indicate that the applicant has complied with the requirements set forth at § 322(a)(5) or § 322(b) of the Act, that is, that she take an oath of allegiance before a CIS officer after a lawful admittance to the United States prior to her eighteenth birthday. Thus, although the applicant has fulfilled the other requirements of § 322, she will not be eligible to receive her certificate of citizenship until she meets the criteria discussed at § 322(a)(5) and § 322(b) of the Act. As of this date, the applicant has not established eligibility for a certificate of citizenship pursuant to § 322 of the Act, and the appeal is dismissed. This decision is without prejudice to the applicant pursuing these requirements at a later date and prior to her eighteenth birthday.

ORDER: The appeal is dismissed.