



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

Office: DENVER, CO

Date: NOV 29 2006

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:

[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.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant was born on December 8, 1976 in Calgary, Alberta, Canada. The applicant's father, [REDACTED] also born in Canada, acquired U.S. citizenship at his birth on July 31, 1936. The applicant's paternal grandmother, [REDACTED] was born in Wisconsin on October 27, 1911 and her paternal grandfather, [REDACTED] in Nebraska on February 24, 1878. The applicant seeks a certificate of citizenship based on her father's citizenship and the U.S. residence of her U.S. citizen grandmother.¹ Accordingly, she must establish her eligibility under the requirements of section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433, as amended by the Child Citizenship Act (CCA) of 2000, effective as of February 27, 2001. The CCA benefits only those persons who had not yet reached their 18th birthday as of February 27, 2001.

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.

¹ While the AAO notes counsel's January 5, 2006 statement that the applicant's Form N-600 is premised on the residency of her grandfather, the Form N600/N643 Supplement A, Application for Transmission of Citizenship Through a Grandparent, indicates that the applicant is relying on her grandmother's residence in the United States to satisfy the requirements of section 322 of the Act.

(b) Upon approval of the application (which may be filed from abroad) and . . . 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 [Secretary] with a certificate of citizenship.

The district director denied the application based on his determination that the applicant was permanently living in the United States and that record failed to provide sufficient evidence to allow her to acquire U.S. citizenship through her U.S. citizen father. The director also found the applicant to be precluded from acquiring citizenship through her grandparents as she was not living outside the United States in the custody of her U.S. citizen father. The application was denied accordingly.

While the AAO notes the responses to the director's denial provided by counsel and the applicant on appeal, it finds that it would serve no purpose to address the issues that are raised. As noted above, the amended language of section 322 of the Act by the CAA may benefit only those applicants who were not yet 18 years of age on February 27, 2001. The applicant was 24 years old on February 27, 2001. Accordingly, she may not apply for a certificate of citizenship based on her grandparents' residence in the United States. Moreover, even were the applicant eligible for CCA benefits, she would remain ineligible for a certificate of citizenship pursuant to subsection (a)(3). CIS regulations require that a certificate of citizenship application under section 322 be filed, adjudicated, and approved with the oath of allegiance administered before the child's 18th birthday. *See* Form N-600/643 Supplement A (Rev. 05/04/00). *See also* 8 C.F.R. § 322.2(a)(3) (2002). At the time the applicant filed the Form N-600, she was already 25 years of age.

The applicant's age also precludes her from establishing eligibility for a certificate of citizenship under the requirements of the former section 322 of the Act, which 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:

- (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.

(b) Upon approval of the application . . . [and] upon taking and subscribing before an officer of the Service 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.

Whether or not an applicant satisfies the requirements set forth in former section 322(a) of the Act, former section 322(b) requires that an applicant also establish that his or her application for citizenship was approved by Citizenship and Immigration Service (CIS) prior to the applicant's 18th birthday, and that the applicant had taken an oath of allegiance prior to turning 18 years of age. Accordingly, the applicant's age prevents her from benefiting from the provisions of former section 322 of the Act.

To demonstrate that she is eligible for a certificate of citizenship, the applicant must satisfy the requirements at section 301(a)(7) of the 1952 Immigration and Nationality Act (1952 Act), as amended, the applicable immigration statute in effect at the time of her birth in 1976. "The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth." *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9th Cir., 2000) (citations omitted).

Section 301(a)(7) of the 1952 Act 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 ten years, at least five of which were after attaining the age of fourteen years.

The record offers no evidence that the applicant's father resided in the United States prior to her birth. Counsel in a January 5, 2006 response to a request for evidence issued by CIS indicates that no documentation has been submitted with regard to the U.S. residency of the applicant's father as the applicant is relying on the evidence she has submitted regarding the residency of her grandfather. Accordingly, the applicant has not established eligibility for a certificate of citizenship. The appeal will be dismissed.

On October 23, 2006, the AAO received a letter from the applicant requesting the opportunity to make an oral argument regarding the issues in this case. Regulation, however, requires the requesting party to explain in writing why an oral argument is necessary. Further, CIS, which has the sole authority to grant or deny a request for oral argument, will grant such argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, the applicant has identified no such factors or issues, nor offered any specific reasons why oral argument should be held. The AAO finds the written record of proceedings to represent the issues presented by this case and, consequently, denies the applicant's request for oral argument.

ORDER: The appeal is dismissed.