

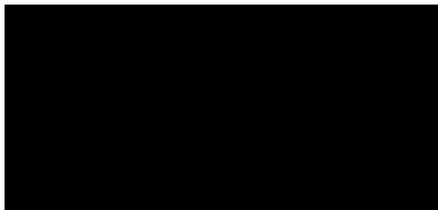
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



E1

AUG 15 2007

FILE:



Office: HONOLULU(HAGATNA, GUAM)

Date:

IN RE:

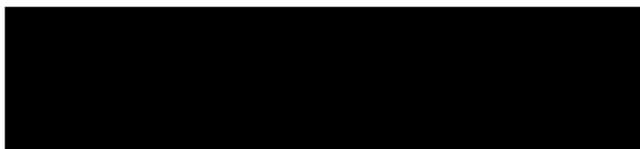
Applicant:



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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The record reflects that the applicant was born on September 8, 2004, in Singapore. The applicant's mother, Tal Westman, was born in Pennsylvania on March 22, 1972, and she is a U.S. citizen. The applicant's father is not a U.S. citizen. The applicant's parents were married on May 10, 2001. The applicant presently seeks a certificate of citizenship pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The district director determined the applicant had failed to establish that a U.S. citizen parent or grandparent was physically present in the United States for five years, at least two years of which were after attaining the age of fourteen. The district director determined further that the applicant had failed to establish that he was entitled to U.S. citizenship under section 320 of the Act, 8 U.S.C. § 1430, because he did not reside in the United States in the custody of his U.S. citizen parent. In addition, the district director determined that the applicant did not acquire U.S. citizenship at birth through his U.S. citizen mother under section 301(g) of the Act; 8 U.S.C. 1401(g), because his mother did not meet the U.S. physical presence requirements set forth in that section. The Form N-600, Application for Citizenship (Form N-600 application) was denied accordingly.

On appeal the applicant asserts, through counsel, that his father works in Singapore for a public corporation, and that he should not be penalized because his parents live abroad due to his father's employment. The applicant makes no other assertions on appeal.¹

The AAO notes that the requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and U.S. Citizenship and Immigration Services (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. *See 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.") In the present matter, counsel for the applicant provides no legal basis for the assertion that statutorily mandated citizenship requirements should be disregarded based on the fact that the applicant's parents reside abroad for employment purposes, and the AAO finds that the applicant must establish that he fully satisfies the relevant statutory requirements contained in section 322 of the Act.

Section 322 of the Act applies to children born and residing outside of the United States, and provides in pertinent part, that:

¹ Counsel indicated on the Form I-290B, Notice of Appeal to the Administrative Appeals Office (Form I-290B) that she would send a brief and/or additional evidence to the AAO within 30 days of filing the Form I-290B. No brief or evidence was received by the AAO within the requested time period. The AAO subsequently faxed a request for copies of any documents that might have been submitted by counsel in the applicant's case. Counsel was advised to respond to the faxed AAO request within five business days. The AAO received no response from counsel.

(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, Department of 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 (or, at the time of his or her death, had) 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.

In the present matter, the evidence in the record and the information contained on the applicant's Form N-600, reflect that the applicant's U.S. citizen mother does not meet the five year U.S. physical presence requirements set forth in section 322(a)(2)(A) of the Act. Moreover, a declaration by the applicant's maternal grandfather, contained in the record, fails to establish that the applicant's grandfather was a U.S. citizen, or that he was physically present in the United States for the five year period set forth in section 322(a)(2)(B) of the Act. Because the applicant failed to meet the requirements set forth in section 322(a)(2) of the Act, he does not qualify for U.S. citizenship under section 322 of the Act.

The applicant has also failed to establish that he qualifies for U.S. citizenship under section 320 of the Act, 8 U.S.C. § 1431. Section 320 of the Act permits a child born outside of the U.S. to automatically become a citizen of the United States upon fulfillment of the following conditions:

- (a) (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.

Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33), defines the term, “residence” as a person’s, “[p]lace of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent.” The evidence in the record clearly demonstrates that the applicant does not reside in the United States, but rather that he resides with his parents in Singapore. Accordingly, the applicant has failed to establish that he meets the requirements set forth in section 320(a)(3) of the Act. He therefore does not qualify for U.S. citizenship under section 320 of the Act.

It is noted that “[t]he 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.” See *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9th Cir. 2000) (citations omitted.) The applicant was born in Singapore on September 8, 2004. Section 301(g) of the Act, 8 U.S.C. § 1401(g) thus applies to an acquisition of citizenship at birth claim.

Section 301(g) of the Act provides in pertinent part that the following shall be nationals or citizens of the United States at birth:

[A] person born outside the geographical limits of the United States and its outlying possessions 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 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

In order to meet the physical presence requirements as set forth in section 301(g) of the Act, the applicant must establish that his mother was physically present in the U.S. for five years March 22, 1972 and September 8, 2004, and that two of the years occurred after March 22, 1986, when his mother turned fourteen.

The information and evidence contained in the record fail to establish that the applicant’s mother was physically present in the United States during the requisite period described above. The applicant has therefore failed to establish that he acquired U.S. citizenship under section 301(g) of the Act.

The regulation provides at 8 C.F.R. § 341.2(c) that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. The applicant has not met his burden of proof in the present matter. The appeal will therefore be dismissed, and the application denied.

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