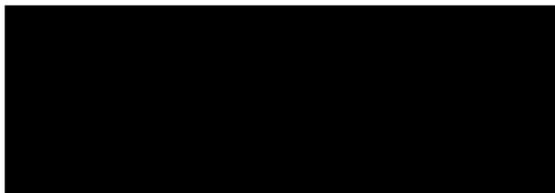




U.S. Citizenship  
and Immigration  
Services

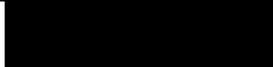
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FILE:



Office: LOS ANGELES, CA

Date: AUG 17 2007

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:

SELF-REPRESENTED<sup>1</sup>

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 black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

<sup>1</sup> According to the Form I-290B, Notice of Appeal, Walter Rodriguez is the attorney representing the applicant and filing the instant appeal. The record before the AAO, however, does not contain any Form G-28, Notice of Entry of Appearance. The AAO will therefore treat this matter as "self-represented."

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

The record reflects that the applicant [REDACTED] was born in Honduras on August 11, 1997. The applicant's mother, [REDACTED] is a citizen of Honduras. The applicant's father, [REDACTED] became a naturalized U.S. citizen on September 17, 2004. The applicant's parents were married on July 24, 2004. The applicant's parents reside in California. The applicant resides in Honduras, with his grandmother. The applicant seeks a Certificate of Citizenship pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The district director determined that the applicant had failed to establish that he was residing outside the United States in the legal and physical custody of a U.S. citizen parent. The district director therefore found that he was ineligible for citizenship and denied the application accordingly.

On appeal, the applicant submits a document entitled "Authorization" executed by his parents on April 20, 2005 and one entitled "Constancy" executed by his grandmother on April 19, 2005.

Section 322 of the Act, 8 U.S.C. § 1433, was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA benefits all persons who have not yet reached their 18<sup>th</sup> birthdays as of February 27, 2001. Because the applicant was under the age of 18 on February 27, 2001, he meets the age requirement for benefits under the CCA.

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).

In order to satisfy the requirements of section 322(a)(4) of the Act, the applicant must establish that he resides *outside of the United States in the legal and physical custody of his U.S. citizen parent*. The AAO notes that by the applicant's own statements in the Form N-600, Application for Certificate of Citizenship, and the documents entitled "Authorization" and "Constancy" submitted by the applicant on appeal, he is not residing with his parents. The record clearly indicates that the applicant's parents reside in California, and the applicant resides in Honduras. The applicant is not in the physical custody of his U.S. citizen parent. The AAO must conclude that the applicant cannot establish eligibility for citizenship under section 322(a)(2)(4) of the Act because he is not residing outside the United States in the physical and legal custody of his U.S. citizen parent.

The AAO notes that the applicant is also ineligible for citizenship under section 320 of the Act, 8 U.S.C. § 1431, because he has not been admitted for lawful permanent residence. Section 320 of the Act, 8 U.S.C. § 1431, provides, 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.

Thus, upon admission to the United States as a lawful permanent resident, the child of a U.S. citizen may automatically acquire U.S. citizenship. The applicant has not been admitted for lawful permanent residence and is therefore ineligible for citizenship under section 320 of the Act, 8 U.S.C. § 1431.

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. The applicant has failed to meet his burden in the present matter. The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.