

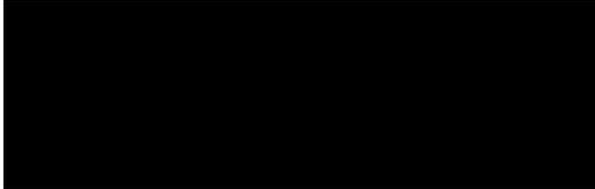
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U.S. Citizenship
and Immigration
Services

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EI



FILE:



Office: MIAMI, FL

Date:

JUL 27 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

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

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

The applicant was born on January 20, 1988 in Barbados. The record reflects that the applicant's mother was born in Barbados, and that she derived U.S. citizenship at birth through her U.S. citizen father, [REDACTED]. The applicant's father is not a U.S. citizen. The applicant seeks a certificate of citizenship pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433, based on the claim that she acquired U.S. citizenship through her maternal grandfather.

The district director determined that the applicant was ineligible for U.S. citizenship under section 322 of the Act, because she was not under the age of eighteen when her Form N-600K, Application for Citizenship and Issuance of Certificate Under Section 322 (Form N-600K Application) was adjudicated. The application was denied accordingly.

On appeal the applicant indicates through her mother, that she was under the age of eighteen and eligible for a certificate of citizenship when she filed her Form N-600K application, and that she should not be penalized for U.S. Citizenship and Immigration Services (CIS) application processing delays.

The AAO notes that the requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress. 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. *See generally, Iddir v. INS*, 301 F.3d 492 (7th Cir. 2002.) The AAO therefore finds that the applicant's eligibility for citizenship under section 322 provisions is not affected or changed by CIS processing delays, and that in order to obtain a certificate of citizenship, the applicant must establish that she fully meets section 322 of the Act requirements.¹

Section 322 of the Act provides, 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

¹ The AAO notes that its appellate jurisdiction is limited, and that the AAO has no jurisdiction over unreasonable delay claims arising under the Act or pursuant to constitutional due process claims. *See generally*, 8 C.F.R. § 103.1(f)(3)(iii) (2003) and 8 C.F.R. § 2.1 (2004). *See also generally, Fraga v. Smith*, 607 F.Supp. 517 (U.S. Dist.Ct. Or. 1985) (Relating to federal court jurisdiction over such claims.)

(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 . . . 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 record reflects that the applicant turned eighteen on January 20, 2006, prior to CIS adjudication or approval of her citizenship application. The applicant therefore does not meet the statutory requirements for citizenship as set forth in section 322 of the Act. Accordingly, the AAO finds it unnecessary to address whether the applicant's maternal grandfather satisfied the physical presence requirements set forth in section 322(a)(2)(B) of the Act.

The AAO notes that the applicant also failed to establish that she derived citizenship through her U.S. citizen mother. "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). The applicant was born on January 20, 1988. Section 301(g) of the Act, 8 U.S.C. § 1401(g) therefore applies to her derivative citizenship claim.

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

(g) 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. . . .

The record contains no evidence to establish that the applicant's mother was physically present in the U.S. for five years prior to the applicant's birth. The applicant therefore does not meet the requirements for citizenship under section 301(g) of the Act.

The burden of proof is on the claimant to establish her claimed citizenship by a preponderance of the evidence. 8 C.F.R. § 341.2(c). The AAO finds that the applicant has not met her burden of proof in the



present matter. The appeal will therefore be dismissed and the application will be denied.

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