



U.S. Citizenship
and Immigration
Services

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FILE:

Office: MIAMI (TAMPA), FL

Date:

JUN 08 2007

IN RE:

Applicant:

APPLICATION:

Application for Certificate of Citizenship under section 322 of the former 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, 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 in Italy on March 7, 2005. The applicant's mother, [REDACTED] was born in Italy on July 30, 1977, and she acquired U.S. citizenship at birth through her mother, [REDACTED]. The applicant's father is not a U.S. citizen. The record reflects that the applicant's parents are not married. 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 her grandmother's U.S. citizenship and physical presence in the United States prior to the applicant's birth.

The district director concluded that the applicant was ineligible for a certificate of citizenship under section 322 of the Act, because she failed to establish that her U.S. citizen mother or grandmother had been physically present in the United States for at least five years. The applicant's Form N-600K, Application for Citizenship and Issuance of Certificate under Section 322 (Form N-600K application) was denied accordingly.

On appeal, the applicant asserts, through her grandmother, that although her mother does not meet the U.S. physical presence requirements contained in section 322 of the Act, the evidence in the record establishes that her grandmother [REDACTED] was physically present in the United States for the required time period set forth in section 322 of the Act. On this basis, the applicant requests that her Form N-600K application be approved.

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

(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 AAO finds that the applicant meets the U.S. citizen parent requirement set forth in section 322(a)(1) of the Act, as the U.S. Department of State Certificate of Birth Abroad contained in the record establishes that the applicant's mother is U.S. citizen by birth. The applicant failed, however, to meet the physical presence requirement for her U.S. parent as set forth in section 322(a)(2)(A) of the Act. The record contains no evidence to establish that the applicant's mother was physically present in the United States for at least five years. The AAO notes further that on appeal the applicant concedes, through her grandmother, that her mother was not physically present in the U.S. for the required time period set forth in section 322(a)(2)(A) of the Act. Nevertheless, the applicant has established that her grandmother, Ms. Fairbank, meets the U.S. physical presence requirements contained in section 322(a)(2)(B) of the Act.

The record contains the following evidence relating to [REDACTED]'s physical presence in the United States prior to the applicant's birth:

A State of Maryland birth certificate reflecting that [REDACTED] was born in Baltimore, Maryland on March 19, 1947.

A Certificate of Baptism reflecting that [REDACTED] was baptized at St. Timothy's Church in Baltimore, Maryland on April 4, 1953.

A College of William and Mary, Williamsburg, Virginia, Student Grade Report reflecting that [REDACTED] completed 15 credit hours during the period ending on June 9, 1967, and that she had previously completed 46 credit hours at the college.

A College of William and Mary, Certificate of Graduation, reflecting that [REDACTED] graduated with a Bachelor of Arts degree on June 8, 1969.

The September 13, 1978, Department of State, Report of Birth Abroad of a Citizen of the United States of America, for the applicant's mother, reflecting the following U.S. physical presence for [REDACTED]

Birth-Apr. 1954; 2 mos. in 55; 3 mos. in 57; 2 mos. in 1959; 2 mos. in 61; 5 mos. in 63; 10 mos. every year from 1965 to 1968; Sept. 68 - Apr. 1970.

A September 13, 1978, Department of State, Certification of Birth Abroad recognizing that the applicant's mother acquired U.S. citizenship at birth through her mother, [REDACTED]

The regulation provides at 8 C.F.R. § 341.2(c) that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. Under the preponderance of evidence standard, it is generally sufficient that the proof establish that something is probably true. *See Matter of E-M*, 20 I&N Dec. 77 (Comm. 1989.) Upon review of the cumulative evidence contained in the record, the AAO finds that the applicant has established by a preponderance of the evidence that [REDACTED] was physically present in the United States for a period of five years, at least two years of which occurred after March 19, 1961, when [REDACTED] turned fourteen. Accordingly, the applicant has met the requirements set forth in section 322(a)(2)(B) of the Act.

The applicant's birth certificate reflects that she was born on March 7, 2005. The applicant thus meets the requirement that she be under the age of eighteen, contained in section 322(a)(3) of the Act. The evidence in the record additionally indicates that the applicant resides outside of the United States in the legal and physical custody of her citizen parent, as set forth in section 322(a)(4) of the Act. The AAO finds that the applicant has failed, however, to establish that she meets the requirement that she is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status, as found in section 322(a)(4) of the Act.

The AAO conducts the final administrative review and enters the ultimate decision for CIS on all immigration matters that fall within its jurisdiction. The AAO reviews each case de novo as to questions of law, fact, discretion, or any other issue that may arise in an appeal that falls under its jurisdiction. Because the AAO engages in de novo review, the AAO may deny an application or petition that fails to comply with the technical requirements of the law, without remand, even if the district or service center director does not identify all of the grounds for denial in the initial decision. *See Helvering v. Gowran*, 302 U.S. 238, 245-46 (1937); *see also, Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

The record contains no information or evidence to indicate or establish that the applicant is temporarily present in the United States pursuant to a lawful admission, and that she is maintaining such lawful status. The applicant has therefore failed to establish that she meets the requirements set forth in section 322(a)(2)(4) of the Act. Accordingly, the applicant does not qualify for citizenship under section 322 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. This denial is without prejudice. The applicant may file a new N-600 if she makes a lawful entry to the United States and files the N-600 while in status.

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