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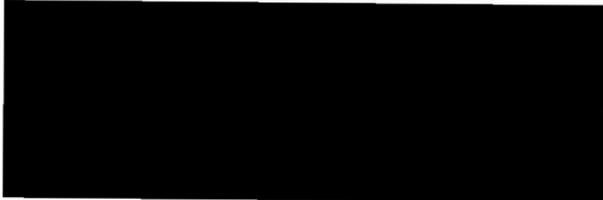
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
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U.S. Citizenship
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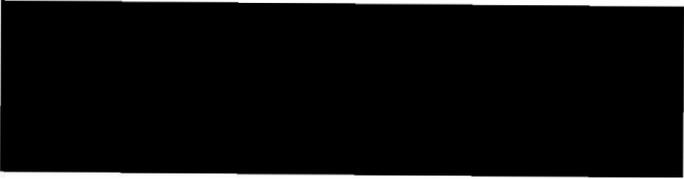
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FILE: OFFICE: LOS ANGELES, CA DATE: **APR 23 2008**

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.



Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Form N-600K, Application for Citizenship and Issuance of Certificate Under Section 322 (N-600K Application) was denied by the Field Office Director, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the N-600K application will be denied.

The applicant was born in Canada on November 8, 2006. The applicant's mother was born in Iran, and she became a naturalized U.S. citizen on February 28, 2007, when the applicant was less than four months old. The applicant's father was born in Canada, and he is not a U.S. citizen. The applicant's parents married in Canada on July 19, 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. § 1433, based on the claim that she derived citizenship through her mother.

The field office director concluded that the applicant's mother lives in California, and that the applicant failed to establish she resides in Canada in the physical custody of her U.S. citizen parent, as required by section 322 of the Act. The N-600K application was denied accordingly.

On appeal the applicant's mother indicates, through counsel, that the applicant resides with her in Canada. The applicant's mother indicates that although she has a residence in California, she has not yet relocated to California because she does not wish to be separated from her children and husband in Canada.

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.

Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33), states that, “[t]he term “residence” means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent.” The Board of Immigration Appeals clarified in *Matter of Jalil*, 19 I&N Dec. 679 (BIA 1988), that the maintenance of financial interests, the retention of a house, or the intention to return does not establish a person’s “dwelling place in fact” for purposes of section 101(a)(33) of the Act.

The record contains the following evidence relating to the residence of the applicant and her mother:

The applicant’s N-600K application, filed July 24, 2007, reflecting that the applicant lives in Canada and that the applicant’s mother lives in Sherman Oaks, California.

A May 29, 2007, rental agreement reflecting that the applicant’s mother, and her mother’s parents signed a one year agreement to rent an apartment in Sherman Oaks, California beginning July 1, 2007.

A September 27, 2007, declaration written by the applicant’s mother stating that she resides with the applicant and has been separated from the applicant for only one night since the applicant’s birth. The applicant’s mother indicates that she lived in Lansing, Michigan from December 2001 until her naturalization as a U.S. citizen on February 28, 2007. She indicates that during that time, she traveled to Canada regularly to spend time with her husband. She indicates further that she gave birth to the applicant in Canada. The applicant’s mother indicates that in June 2007, she and her husband decided to relocate to Los Angeles, California. She indicates that she has a residence in California, but that she has not yet relocated there because she does not wish to be separated from her children and husband in Canada.

An undated declaration signed by the applicant’s father stating that he lives in Toronto, Canada, and that he and his wife travel constantly between Canada and the United States to visit one another. The applicant’s father indicates that the applicant was born in Canada, and that she has been in the care of her mother since birth except for one night when the applicant’s mother traveled to Michigan to become a naturalized U.S. citizen. He indicates that the applicant has traveled to the United States with her mother on several occasions, and that he and the applicant’s mother want to raise the applicant and her sister in the United States.

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. Under the preponderance of evidence standard, it is generally sufficient that the proof establish that something is probably true. *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989).

Although it appears that the applicant has been in the physical custody of her U.S. citizen mother since the time of her birth on November 8, 2006, the AAO finds that the applicant has failed to establish, by a preponderance of the evidence, that her mother's residence is outside of the United States. The applicant's mother states in her declaration that she lived in Lansing, Michigan from December 2001, until the time of her naturalization on February 28, 2007, and the N-600K application and the rental agreement evidence indicate that the applicant's mother has lived in California since at least July 2007. Declarations written by both of the applicant's parents reflect further that they have lived separately, and that they have traveled constantly between Canada and the United States to see one another. The AAO finds, upon review of the totality of the evidence, that the applicant has failed to establish that her mother resides in Canada, or that the applicant resided with her mother in Canada when the N-600K application was filed or adjudicated.

It is noted that the record also lacks evidence to establish that the applicant is temporarily present in the U.S. pursuant to a lawful admission, or that she is maintaining such lawful status, as set forth in section 322(a)(5) of the Act. Accordingly, the applicant does not qualify for citizenship under section 322 of the Act

The applicant also does not qualify for citizenship under section 320 of the Act, which states 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.

The applicant has failed to demonstrate that she resides with her mother in the United States pursuant to a lawful admission for permanent residence, as set forth in section 320(a)(3) of the Act. Accordingly, the applicant does not qualify for citizenship under section 320 of the Act.

Because the applicant has not met her burden of proof in the present matter, the appeal will be dismissed and the N-600K application will be denied.

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