



U.S. Citizenship
and Immigration
Services

E2

[Redacted]

FILE:

[Redacted]

Office: PORTLAND, OREGON

Date: DEC 20 2005

IN RE:

[Redacted]

APPLICATION:

Application for Certificate of Citizenship under Sections 301, 320 and 322 of the Immigration and Nationality Act; 8 U.S.C. § 1433.

ON BEHALF OF APPLICANT:

[Redacted]

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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

Robert P. Wiemann, Director
Administrative Appeals Office

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

The record reflects that the applicant was born on January 7, 1989 in Canada. The applicant's mother, [REDACTED] is a United States citizen (USC) by birth. The applicant's father, [REDACTED] has no claim to United States citizenship. The applicant's grandfather, [REDACTED] is a USC by birth. The applicant's parents married in Canada on November 21, 1986, and were divorced on January 7, 1993. The applicant seeks a certificate of citizenship pursuant to section 301, 320, or 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The director determined that the applicant was ineligible for United States citizenship under section 320 or 322 of the Act and denied the application accordingly. *Decision of the District Director, Portland Oregon, dated July 1, 2005.*

On appeal, the applicant (through her mother) contends that she acquired citizenship through her USC mother. No documents were submitted in support of the appeal. The applicant's N-600 Application for Certificate of Citizenship included a completed N-643 Supplement A, Application for Transmission of Citizenship Through a Grandparent. In support of the original N-600, counsel submitted the applicant's birth certificate; the applicant's school records; [REDACTED] birth certificate; [REDACTED] United States passport; [REDACTED] Oregon Driver's License; the marriage license for [REDACTED] first marriage; the divorce decree for [REDACTED] first marriage; [REDACTED] birth certificate; and a variety of other documents. The entire record was considered in rendering this decision.

First examined is counsel's contention that the applicant derived citizenship through her USC grandfather. Section 322 of the Act 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 [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.

The record in the present case reflects that the applicant has resided in the United States with her USC mother since 2004. The applicant therefore does not meet the section 322(a)(4) of the Act requirement that she reside outside of the United States in the legal and physical custody of her USC mother. Because the applicant has failed to establish that she meets the residence abroad requirements contained in section 322(a) of the Act, the AAO finds it unnecessary to determine whether the applicant's grandfather meets the United States physical presence requirements set forth in section 322(a)(2)(B) of the Act.

Next examined is the applicant's claim that she acquired United States citizenship through her USC mother. The record indicates that [REDACTED] was born in Canada to USC parents. The record further indicates that [REDACTED] parents were residents of Wisconsin prior to the applicant's birth, and that [REDACTED] a United States passport. Accordingly, [REDACTED] is a USC by birth. Section 301 of the Act, which lists the conditions under which United States citizenship vests at birth, provides:

(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 indicating that [REDACTED] lived in the United States at any time prior to the applicant's birth. Accordingly, the applicant did not acquire United States citizenship at birth through her mother.

The AAO notes further that the applicant does not meet the requirements for United States citizenship set forth in section 320 of the Act. Section 320(a) of the Act states 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.

Although the record reflects that the applicant's mother is a USC, the record contains no evidence to demonstrate that the applicant was admitted into the United States as a lawful permanent resident, or that she has at any time obtained lawful permanent resident status in the United States. Accordingly, the applicant did not derive citizenship pursuant to section 320 of the Act.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the applicant to establish the claimed citizenship



Page 4

by a preponderance of the evidence. The applicant has not met her burden and the appeal will be dismissed without prejudice.

ORDER: The appeal is dismissed.