

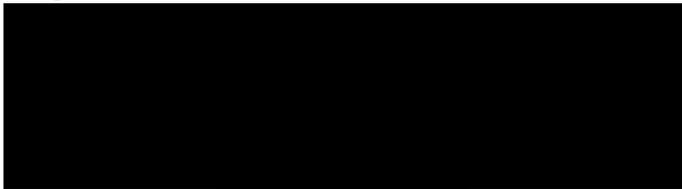
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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: SAN FRANCISCO, CA Date: **SEP 21 2007**

IN RE: Applicant: [Redacted]

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, San Francisco, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application will be denied.

The applicant was born on May 21, 1988, in El Salvador, and he turned eighteen on May 21, 2006. The record reflects that the applicant's mother was born in El Salvador, and that she acquired U.S. citizenship at birth through her U.S. citizen father. The applicant's father is not a U.S. citizen. The applicant filed an Application for Certificate of Citizenship (Form N-600) on November 7, 2005. 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 he is entitled to U.S. citizenship through his maternal grandfather.

In a decision dated April 19, 2007, the district director determined that the applicant was ineligible for U.S. citizenship under section 322 of the Act, because he was not under the age of eighteen when his Form N-600 application was adjudicated. The application was denied accordingly.

On appeal the applicant asserts, through his mother, that he was under the age of eighteen and eligible for a certificate of citizenship when he filed his Form N-600. The applicant indicates that he made several efforts to ensure that his Form N-600 would be processed expeditiously, however, U.S. Citizenship and Immigration Services' (CIS) mishandling of his case led to a delay in the adjudication of his application, and his ultimate age-based ineligibility for U.S. citizenship. The applicant indicates that he should not be penalized for CIS's mishandling of his case, and he indicates that principles of fairness require that his Form N-600 be approved.

The AAO notes that requirements for U.S. 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. A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *See INS v. Pangilinan*, 486 U.S. 875, 885 (1988). Even courts may not use their equitable powers to grant citizenship, and any doubts concerning citizenship are to be resolved in favor of the United States. *Id.* at 883-84; *see also United States v. Manzi*, 276 U.S. 463, 467 (1928) (stating that "citizenship is a high privilege, and when doubts exist concerning a grant of it . . . they should be resolved in favor of the United States and against the claimant.") Accordingly, the AAO finds that the applicant's eligibility for citizenship under section 322 of the Act is not affected or changed by CIS delays, and that in order to obtain a certificate of citizenship, the applicant must establish that he fully meets section 322 of the Act requirements.

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 record reflects that the applicant turned eighteen on May 21, 2006, prior to CIS adjudication or approval of his Form N-600. The applicant therefore failed to meet the age requirements set forth in sections 322(a)(3) and 322(b) of the Act. Because the applicant does not meet the statutory requirements contained in section 322 of the Act, 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.

It is noted that the applicant also failed to establish that he is entitled to citizenship through his 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 May 21, 1988. Section 301(g) of the Act, therefore applies to his acquisition of citizenship at birth 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 evidence in the record fails to establish that the applicant's mother meets the U.S. physical presence requirements contained in section 301(g) of the Act, and the applicant's Form N-600 indicates that the applicant's mother was not physically present in the United States for five years prior to the applicant's birth, at least two years of which were after attaining the age of fourteen. 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 his or 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 his 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.