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U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

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[Redacted]

FILE

Office: NEW YORK

Date:

DEC 22 2004

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:

[Redacted]

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.

John F. Grissom, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, New York, New York. The matter was appealed and, on July 30, 2008, remanded by the Administrative Appeals Office (AAO) to the director for issuance of a new decision. The director issued a new decision denying the application, and certified it to the AAO for review. The director's decision will be withdrawn and the application will be granted.

The record reflects that the applicant was born in Poland on March 25, 1991. His father was born in Poland on September 6, 1965, and became a U.S. citizen upon his naturalization on August 23, 1995 (when the applicant was four years old). **The applicant's mother is not a U.S. citizen.** The applicant's parents have been married since 1990. On June 5, 1997, the applicant was admitted to the United States as a lawful permanent resident. He 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 derived citizenship through his father.

The district director initially denied the applicant's citizenship claim, finding that he had failed to establish that his father had been physically present in the United States as required by section 322(a)(2)(A) of the Act, 8 U.S.C. § 1433(a)(2)(A). The director further found that the applicant was not temporarily present in the United States as required.

The AAO sustained the applicant's appeal on June 13, 2008. The AAO then found that, although the applicant had provided evidence of his father's physical presence, he did not meet the requirement of section 322(a)(5) of the Act, 8 U.S.C. § 1433(a)(5), because he was not temporarily present in the United States. The AAO nonetheless found that the applicant had acquired U.S. citizenship under section 320 of the Act, 8 U.S.C. § 1431, as amended, because he had resided in the United States as a lawful permanent resident between 1997 and 1999.

On July 30, 2008, the AAO reopened the case *sua sponte* finding that the June 13, 2008 decision was in error. The applicant could not have acquired U.S. citizenship pursuant to section 320 of the Act, as amended by the Child Citizenship Act of 2000 (the CCA), because the CCA was not in effect at the time. Upon reopening, the AAO found it necessary to remand the matter to the district director for scheduling of an interview and issuance of a new decision. On remand, the district director concluded that the applicant was ineligible for citizenship under section 322 of the Act because he was present in the United States as a lawful permanent resident. The director concluded that the applicant therefore did not fulfill the requirement of section 322(a)(5) of the Act. The director certified her decision to the AAO for review.

Section 322 of the Act, 8 U.S.C. § 1433, was amended by the CCA, and took effect on February 27, 2001. The CCA benefits all persons who had not yet reached their 18<sup>th</sup> birthdays as of February 27, 2001. Because the applicant is under the age of 18, he meets the age requirement for benefits under the CCA. The applicant's 18<sup>th</sup> birthday will be on March 25, 2009.

Section 322 of the Act, 8 U.S.C. § 1433, applies to children born and residing outside of the United States, and 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 shall issue a certificate of citizenship to such applicant upon proof, to the satisfaction of the Attorney General, 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 [citizen parent] (or, if the citizen parent is deceased, an individual who does not object to the application).

(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, except as provided in the last sentence of section 337(a), 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 with a certificate of citizenship.

(c) Subsections (a) and (b) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

The AAO notes that section 320 of the Act, 8 U.S.C. § 1431, provides for the acquisition of U.S. citizenship by children who are, *inter alia*, “residing in” the United States pursuant to a lawful admission for permanent residence.<sup>1</sup> Lawful permanent residents who are temporarily present in the United States are not “residing in” the United States. Therefore, like the applicant, they must seek a certificate of citizenship pursuant to section 322 of the Act, 8 U.S.C. § 1433.

At issue in this case is whether a child admitted to the United States as a lawful permanent resident can satisfy the requirement of section 322(a)(5) of the Act, that is whether he is “temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.” The regulations, at 8 C.F.R. § 322.1 provide that the term “[l]awful admission shall have the same meaning as provided in section 101(a)(13) of the Act.” Section 101(a)(13) of the Act, 8 U.S.C. § 1101(a)(13), define “admission” as the “lawful entry of the alien into the United States after inspection and authorization by an immigration officer.” A lawful admission as defined in section 101 of the Act includes admissions in both immigrant and non-immigrant status. Because the regulations tie the requirement of “lawful admission” to the definition in section 101 of the Act, the “temporary” requirement in section 322 of the Act refers to the length and nature of the child’s presence in the United States, not his immigration status. Eligibility for citizenship under section 322 of the Act is not limited to non-immigrants.

Section 322 of the Act, therefore, provides for U.S. citizenship for children, like the applicant, who are residing abroad and temporarily present in the United States pursuant to a lawful admission (in any lawful status). The district director, and the AAO in its June 13, 2008 decision, erred in finding that an admission as a lawful permanent resident was *per se* not “temporary” and therefore barred eligibility for citizenship under section 322(a)(5) of the Act. As noted, section 322(a)(5) of the Act requires temporary presence in the United States pursuant to a lawful admission in any lawful status, including permanent residence. The AAO therefore finds that the applicant was eligible for citizenship under section 322 of the Act, 8 U.S.C. § 1433, when he temporarily entered the United States for his interview at the New York City office of USCIS on January 21, 2005.

8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. In order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is “probably true” or “more likely than not.” *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). The applicant in the present case met his burden when he appeared before the district director, while “temporarily present in the United States pursuant to a lawful admission.” The director’s decision will therefore be withdrawn, and the application will be approved.

**ORDER:** The district director’s decision is withdrawn, the application is approved.

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<sup>1</sup> The AAO notes that the applicant would automatically acquire U.S. citizenship (pursuant to section 320 of the Act) should he begin “residing in” the United States in his father’s custody at any time prior to March 25, 2009.