

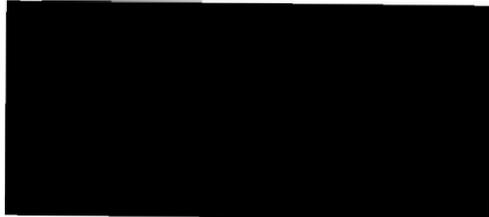
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: NEW YORK, NY Date: **JUL 25 2008**

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Form N-600K, Application for Citizenship and Issuance of Certificate Under Section 322 (Form N-600K) was denied by the District Director, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the district director for further action consistent with this decision, and for issuance of a new decision which, if adverse to the applicant, will be certified to the AAO for review.

The record reflects that the applicant was born in Italy on [REDACTED]. She will turn eighteen on [REDACTED]. The applicant's mother was born in the United States, and she is a U.S. citizen. The applicant's father is not a U.S. citizen. The applicant's parents married in Italy on [REDACTED]. 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 U.S. citizenship through her mother and maternal grandfather.

The district director found that despite requests for evidence, the applicant had failed to provide evidence establishing that she was the child of a U.S. citizen, or that her mother was physically present in the United States for the required time period set forth in section 322 of the Act. The Form N-600K was denied accordingly.

On appeal the applicant asserts, through her mother, that she submitted evidence of her parentage and of her grandfather's physical presence in the United States in a timely matter. The applicant submits a postal receipt reflecting that she sent a document to the district office in New York on July 11, 2006, prior to the district director's decision. The applicant asserts that the evidence establishes she is entitled to derivative citizenship through her mother and maternal grandfather, and she requests that her Form N-600K application be approved.

Section 322 of the Act applies to derivative citizenship claims by 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.

(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 contains the following evidence relating to the applicant's citizenship claim under section 322 of the Act:

An Italian Extract of the Register of Births reflecting that the applicant was born on [REDACTED]

An Italian marriage certificate reflecting that the applicant's parents married in Italy on April [REDACTED]

A November 21, 2005, Italian Family Status Certificate from the town of Battipaglia registry office, certifying that the applicant lives with her parents and sister in Italy at [REDACTED] Battipaglia.

A New York, Certificate of Birth reflecting that the applicant's mother, [REDACTED], was born in New York on [REDACTED] to [REDACTED] (mother) and [REDACTED] (father.)

A U.S. Certificate of Naturalization reflecting that the applicant's maternal grandfather [REDACTED], became a naturalized U.S. citizen on August 6, 1968, at the age of [REDACTED] and that he resided in Brooklyn, New York at that time.

U.S. Social Security Administration information reflecting that the applicant's maternal grandfather [REDACTED] earned wages in the United States for 7 years, from 1962 to 1968.

Three Certificates of Baptism reflecting that [REDACTED] children, [REDACTED] and [REDACTED] were baptized at the St. John Evangelist Church in Brooklyn, New York on May 3, 1964, August 14, 1966, and March 31, 1968, respectively.

A U.S. passport and Italian entry stamp for the applicant's mother reflecting that she was admitted into Italy on [REDACTED]

A July 10, 2006, affidavit signed by the applicant's mother stating in pertinent part that she was born in the United States on [REDACTED] but that she departed the country in 1969, and was therefore not physically present in the U.S. for five or more years. She states that her father became a naturalized U.S. citizen on August 6, 1968, after residing in the U.S. for over five years between December 7, 1961 and April 29, 1969.

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.)

Upon review of the record, the AAO finds that the applicant has established by a preponderance of the evidence that her mother was born a U.S. citizen, as required by section 322(a)(1) of the Act. The applicant has additionally established, by a preponderance of the evidence, that her paternal grandfather became a naturalized U.S. citizen in August 1968, and that he was physically present in the United States for over five years between 1962 and 1968, all of which were after he attained the age of fourteen, as required by section 322(a)(2)(B) of the Act. The applicant has established further, by a preponderance of the evidence, that she is under the age of eighteen, and that she resides outside of the United States in the legal and physical custody of her citizen parent, as required by section 322(a)(3) and (4) of the Act.

The AAO finds, however, that the record contains no evidence to establish the section 322(a)(5) of the Act requirement that the applicant is temporarily present in the United States pursuant to a lawful admission, and that she is maintaining such status.

The regulation at 8 C.F.R. § 322.3(a) reflects that U.S. Citizenship and Immigration Services (CIS) sends appointment notices and schedules interviews for section 322 of the Act, certificate of citizenship purposes. In the present matter, the applicant has established that she qualifies for derivative citizenship under section 322(a) of the Act, but for U.S. temporary presence requirements. Accordingly, the AAO shall remand the matter to the district director for scheduling of an interview under 8 C.F.R. § 322.3(a), and for issuance of a new decision. If the new decision is adverse to the applicant, it shall be certified to the AAO for review.

ORDER: The matter is remanded to the district director for further action consistent with this decision, and for issuance of a new decision, which if adverse to the applicant, will be certified to the AAO for review.