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U.S. Citizenship
and Immigration
Services

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FILE:

OFFICE: NEW YORK, NY

DATE:

JUL 28 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:

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 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.¹ 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 Canada on April 4, 2000. He will turn eighteen on April 4, 2018. The applicant's mother was born in New York on June 16, 1968, and she is a U.S. citizen. The applicant's father is not a U.S. citizen. The applicant's parents married in Canada on [REDACTED], and they remain married. 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 he derived U.S. citizenship through his mother.

The district director concluded the applicant had failed to submit evidence establishing that his U.S. citizen grandparent was physically present in the United States for at least five years, as set forth in section 322 of the Act. The district director determined that the applicant's claim could not be assessed without the requested evidence.

Through his mother, the applicant asserts on appeal that he submitted evidence of his grandmother's U.S. physical presence prior to the document submission deadline provided by the district director. The applicant resubmits the evidence on appeal, and requests that his Form N-600K be granted.

Section 322 of the Act applies to derivative citizenship claims by children born and residing outside of the United States. Under section 322 of the Act:

(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--

¹ It is noted that the district director issued one denial decision for the applicant and six of his siblings [REDACTED]. As a result, the applicant's mother attempted to include all of the applicant's siblings in the present appeal. Although the present decision may be applicable to the sibling cases, only one Notice of Appeal filing fee was paid. Under 8 C.F.R. § 103.3(a)(2)(i), a proper Notice of Appeal and filing fee must be filed for each individual. Accordingly, the New York District Office informed the applicant that the present Notice of Appeal and filing fee were applied to one case number: [REDACTED]. The attempted appeals for cases: [REDACTED] were rejected for failure to submit proper filing fees.

- (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 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).

The AAO finds that the applicant has established by a preponderance of the evidence that his maternal grandmother [REDACTED] meets the U.S. physical presence requirements set forth in section 322(a)(2)(B) of the Act. The record contains the following evidence relating to [REDACTED] physical presence in the U.S.:

A birth certificate reflecting that [REDACTED] was born in New York on [REDACTED]

A marriage license reflecting that [REDACTED] was married in New York on [REDACTED]

A birth certificate reflecting that the applicant's mother was born to [REDACTED] in New York on June 16, 1968.

A Separation Agreement Addendum signed by [REDACTED] and her first husband in New York on February 14, 1977. The Addendum refers to a Separation Agreement signed by Ms. [REDACTED] and her first husband in New York on November 19, 1973.

A death certificate reflecting that [REDACTED] husband died in New York on January 13, 1986, and a marriage certificate reflecting that [REDACTED] married her second husband in New York on March 4, 1999.

A New York State drivers license issued to [REDACTED] on April 23, 1999, and containing her New York address.

U.S. Social Security documents containing [REDACTED] Social Security number, and reflecting that she earned a salary in the U.S. between 1961 and 1967; 1974 and 1975; and 1979 and 1981.

2006 Social Security Benefit statements sent to [REDACTED] at a New York address.

U.S. Federal Income Tax Return statements filed by [REDACTED] and her husband in 2002 and 2004-2006, containing [REDACTED] New York address.

The AAO finds that the above evidence establishes, by a preponderance of the evidence that [REDACTED] has been physically present in the U.S. for five or more years, at least two years of which occurred after she turned fourteen, on June 28, 1957. The requirements set forth in section 322(a)(2)(B) of the Act have therefore been met. The applicant has additionally established that section 322(a)(1), and (3) of the Act requirements that his mother is a U.S. citizen, and that the applicant is under the age of eighteen, have been met. Birth certificate and Form N-600K application evidence indicates further that the applicant was born in Canada and that he lives in Canada in the legal and physical custody of his U.S. citizen parent, as required by section 322(a)(4) of the Act.

The applicant has failed, however, to establish by a preponderance of the evidence that he meets the section 322(a)(5) of the Act requirement that he is temporarily present in the United States pursuant to a lawful admission, and that he is maintaining such lawful status. The evidence in the record reflects that the applicant lives in Canada with his family. The record contains no evidence to establish or indicate that the applicant has been admitted into the United States, or that he is temporarily present in the U.S. and is maintaining such lawful 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 he 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.²

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.

² It is noted that the present decision may be applicable to the applicant's six siblings as well.