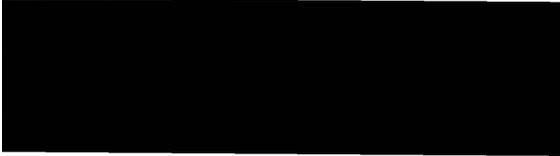


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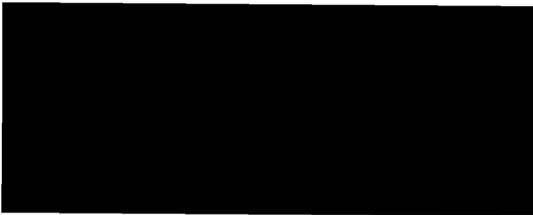
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FILE: OFFICE: NEW YORK, NY DATE: **JUL 30 2008**

IN RE: APPLICANT: 

APPLICATION: Application for Certificate of Citizenship under sections 322 and 320 of the Immigration and Nationality Act, 8 U.S.C. §§ 1433 and 1431.

ON BEHALF OF APPLICANT:



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. A subsequent appeal was sustained by the Administrative Appeals Office (AAO) on June 13, 2008. The AAO now moves to reconsider the matter *sua sponte*. The June 13, 2008, AAO decision will be withdrawn. 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 applicant was born in Poland on March 25, 1991. He will turn eighteen on March 25, 2009. The applicant's father was born in Poland on September 6, 1965, and he became a naturalized U.S. citizen 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 married on February 10, 1990, and they remain married. The applicant was admitted into the United States as a lawful permanent resident on June 5, 1997, when he was six years old. 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 U.S. citizenship through his father.

The district director concluded the applicant had failed to provide evidence establishing that his father was physically present in the United States for at least five years, as set forth in section 322(a)(2)(A) of the Act. The district director additionally indicated that the applicant was not temporarily present in the U.S. pursuant to a lawful admission and that he was maintaining such lawful status, as required by section 322(a)(5) of the Act. The Form N-600K was denied accordingly for lack of prosecution.

Through counsel, the applicant indicated on appeal that he lives in Poland with his father, and he indicated that additional evidence established that his father was physically present in the United States for five years.

The AAO sustained the applicant's appeal on June 13, 2008, on the basis that under section 320 of the Act provisions, he had automatically derived U.S. citizenship through his father in 1997. The AAO's determination that the applicant qualified for derivative U.S. citizenship under section 320 of the Act was in error. The matter will therefore be reconsidered *sua sponte*.

Section 320(a) of the Act, provides in pertinent part that:

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.

In its June 13, 2008 decision, the AAO found that the applicant had demonstrated by a preponderance of the evidence, that between June 1997 and sometime in 1999, the applicant resided in the U.S. in the legal and

physical custody of his U.S. citizen father, pursuant to a lawful admission for permanent residence. The AAO determined that the requirements contained in section 320(a)(3) of the Act had therefore been met. The AAO determined that the applicant had additionally established that he does not turn eighteen until March 25, 2009, and that his father became a naturalized U.S. citizen in 1995, when the applicant was four years old. The requirements contained in section 320(a)(1) and (2) of the Act were thus also met. The AAO concluded the applicant had therefore established that pursuant to the provisions contained in section 320 of the Act, he automatically became a U.S. citizen after his admission into the United States in June 1997.

The AAO notes on *sua sponte* motion, however, that through amendments contained in the Child Citizenship Act of 2000 (CCA), section 320 of the Act took effect on February 27, 2001. The provisions of the CCA and section 320 of the Act are not retroactive. The provisions and benefits of section 320 of the Act therefore apply only as of February 27, 2001. *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

The AAO based its conclusion that the applicant satisfied section 320(a)(3) of the Act requirements on U.S. residence that occurred between 1997 and 1999. Because these dates occurred prior to February 27, 2001, they may not be used for section 320 of the Act derivative citizenship purposes. The record contains no evidence to establish that the applicant resided in the United States in the legal and physical custody of his U.S. citizen father pursuant to a lawful admission for permanent residence on, or after, February 27, 2001. Accordingly, the applicant does not meet the requirements contained in section 320(a)(3) of the Act, and he does not qualify for derivative U.S. citizenship under section 320 of the Act.

The AAO additionally found in its June 13, 2008, decision that the applicant did not qualify for derivative U.S. citizenship under section 322 of the Act.

As previously discussed, section 322 of the Act applies to 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.

The AAO found in its June 13, 2008 decision that the applicant established, by a preponderance of the evidence, that he is under the age of eighteen and that his father became a naturalized U.S. citizen prior to the applicant's eighteenth birthday. The applicant therefore satisfied the requirements contained in section 322(a)(1) and (3) of the Act. The AAO found that the applicant additionally established by a preponderance of the evidence, that his father's residence is in Poland, and that the applicant resides in Poland the physical custody of his father, as set forth in section 322(a)(4) of the Act. Furthermore, the AAO found that the applicant established by a preponderance of the evidence, that his father was physically present in the United States for at least five years, as required by section 322(a)(2)(A) of the Act.

The AAO found, however, that the applicant had failed to establish by a preponderance of the evidence that he met 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 applicant had thus failed to establish that he met all of the requirements for derivative citizenship under section 322 of the Act.

The AAO notes on *sua sponte* motion, that 8 C.F.R. § 322.3(a) tasks U.S. Citizenship and Immigration Services (CIS) with sending appointment notices and scheduling interviews for section 322 of the Act, certificate of citizenship purposes. In the present matter, the applicant 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, which, if adverse to the applicant, 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.