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U.S. Department of Homeland Security
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MAIL STOP 2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE: [REDACTED] Office: CHARLOTTE, NC Date: **NOV 05 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-REPRESENTED¹

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

¹ The Notice of Appeal, Form I-290B, was submitted by "the practice," a law firm in Manila. The AAO notes that "the practice" is not an accredited or authorized representative in proceedings before USCIS.

DISCUSSION: The application was denied by the Field Office Director, Charlotte, North Carolina, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the director for further action consistent with this decision.

The record reflects that the applicant was born in the Philippines on March 14, 2005. He was adopted by [REDACTED] and [REDACTED] on August 8, 2005. The applicant's adoptive parents are U.S. citizens. The applicant resides in the Philippines with his mother. The applicant's father resides in North Carolina. The applicant's adoptive parents were married in 2000. The applicant seeks a Certificate of Citizenship pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The field office director noted the applicant's absence at his interview, and determined that he had failed to establish that he was temporarily present in the United States pursuant to a lawful admission, as required by section 322 of the Act. The director therefore found him ineligible for citizenship and denied the application accordingly.

On appeal, the applicant's parents state that they did not understand that his presence at the interview was required and that they were unable to obtain a visa for him. *See* Affidavit attached to Form I-290B, Notice of Appeal to AAO.

Section 322 of the Act, 8 U.S.C. § 1433, was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA benefits all persons who have not yet reached their 18th 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.

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).

In order to satisfy the requirements of section 322(a)(5) of the Act, the applicant must establish that he is “temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.” The applicant is not in the United States. 8 C.F.R. § 322.3(a) tasks U.S. Citizenship and Immigration Services (CIS) with sending appointment notices and scheduling interviews for citizenship applications under section 322 of the Act. The AAO shall remand the matter to the director for scheduling of an interview as provided in the regulations, 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 director for further action consistent with this decision, and for issuance of a new decision, which, if adverse to the applicant, shall be certified to the AAO for review.