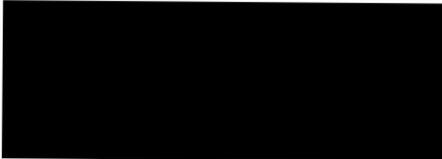


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services



E2

FILE: [REDACTED]

Office: HARLINGEN, TX

Date:

SEP 03 2009

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:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Harlingen, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Mexico on August 20, 1992. The applicant's birth certificate indicates that her parents are [REDACTED] and [REDACTED]. The applicant's mother was born in Mexico on June 16, 1951 and acquired U.S. citizenship at birth pursuant to section 301 of the former Immigration and Nationality Act (the Act), 8 U.S.C. § 1401. The applicant's grandfather was born in Texas in 1913. 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, claiming to derive U.S. citizenship on the basis of her maternal grandfather's physical presence in the United States.

The field office director denied the applicant's citizenship claim upon finding that she had failed to establish her grandfather's physical presence in the United States. The application was accordingly denied.

On appeal, the applicant, through counsel, maintains that her grandfather's physical presence in the United States was established by the grant of a certificate of citizenship to her mother in 1977.

Section 320 and 322 of the Act were amended, and section 321 was repealed, by the Child Citizenship Act of 2000 (CCA). The CCA took effect on February 27, 2001, and benefits all persons who had not yet reached their 18th birthday as of February 27, 2001. Because the applicant was under 18 years of age on February 27, 2001, she meets the age requirement for benefits under the CCA.

Section 322 of the Act, 8 U.S.C. § 1433, as amended by the Child Citizenship Act of 2000, 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 applicant's mother, who was born in Mexico in 1951, acquired U.S. citizenship at birth. The record suggests that she has not been physically present in the United States as required by section 322(a)(2)(A) of the Act. The applicant, however, claims that her U.S. citizen grandfather satisfies the requirement of section 322(a)(2)(B) of the Act because he was physically present in the United States for five years, two of which after his 14th birthday.

The record contains the following evidence relating to the applicant's grandfather's physical presence in the United States: the applicant's grandfather's birth certificate, the applicant's grandfather's baptismal certificate, a copy of a resident identification card issued to the applicant's grandfather in 1969, a voter registration card effective in 1972 (issued in 1975), the applicant's grandparents' marriage certificate (indicating they were married in Mexico in 1953), the applicant's grandfather's death certificate (indicating he died in Mexico in 1976), and the applicant's mother's birth certificate (indicating she was born in Mexico in 1951, and that her birth was registered in 1968) and a copy of her citizenship certificate application.

The AAO finds that the applicant has not met her burden to prove that her grandfather was physically present in the United States for five years, two of which while over the age of 14. The AAO notes the applicant's mother obtained a certificate of citizenship in 1977, but the grant of her application for a certificate of citizenship does not constitute evidence of the applicant's grandfather's physical presence. The AAO cannot find that an applicant has met her burden of

proof based on assumptions regarding what evidence must have been presented in another case. Rather, the AAO must evaluate the evidence in the record before it. At best, the evidence establishes that the applicant's grandfather was physically present in the United States at birth in 1913, in 1969, and sometime between 1972 and 1975. The evidence in the record before the AAO at this time does not establish that the applicant's grandfather was physically present in the United States for five years, two of which while over the age of 14.

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 has failed to meet her burden to prove that her grandfather was physically present in the United States for five years, two of which while over the age of 14. The AAO therefore finds that the applicant has not established her eligibility for U.S. citizenship under section 322 of the Act, 8 U.S.C. § 1433. The appeal will be dismissed.

ORDER: The appeal is dismissed.