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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

[redacted]

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FILE: [redacted] Office: ST. ALBANS, VT Date: DEC 14 2010

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:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, St. Albans, Vermont, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on December 14, 1993 in Israel. The applicant's parents, as indicated on his birth certificate, are The applicant's parents were married in 1990. The applicant's father was born in Israel but acquired U.S. citizenship at birth through his mother. The applicant's paternal grandmother, was born in the United States on April 10, 1932. The applicant, through his father, seeks a certificate of citizenship claiming that he derived U.S. citizenship under section 322 of the Act, 8 U.S.C. § 1433.

The field office director denied the application upon finding that the applicant's grandmother did not have the required physical presence in the United States to transmit U.S. citizenship under section 322 of the Act.

On appeal, the applicant, through counsel, maintains that he is not required to establish that his grandmother "resided" in the United States but only that she was "physically present" here for the period required in section 322 of the Act. *See* Appeal Brief. The applicant states further that his paternal grandmother had the required five years of physical presence in the United States. *Id.*

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The applicant has established his eligibility for a certificate of citizenship under section 322 of the Act for the reasons discussed below and his appeal will therefore be sustained.

The applicable law for derivative citizenship purposes is "the law in effect at the time the critical events giving rise to eligibility occurred." *See Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005). The applicant was born in 1993. Therefore, section 322 of the Act, as amended by the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), is applicable to his case.

Section 322 of the Act provides, in relevant 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 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 record contains a copy of the applicant's grandmother's birth certificate indicating that she was born in Pennsylvania in 1932. The record also contains entry/exit records from the Israeli Ministry of Interior evidencing the applicant's grandmother's travel outside of Israel, in relevant part, between 1976 and 1993. Additionally, the record includes employment documents indicating that the applicant's grandmother was employed in the United States from 1976 to 1978. The director notes that the U.S. Department of State records indicate that the applicant's grandmother entered the United States in 1976 as a J-1 exchange visitor and that there are social security earnings statements covering the period between 1978 and 1979. Physical presence in the United States includes presence in the United States in any status, and does not require the establishment of a residence. *See* 7 FAM § 1133.3-3(a). The record also includes a copy of an abstract from the Jewish Virtual Library indicating that the applicant's paternal great-grandfather was employed as a university professor in the United States from 1932 to 1934. The evidence in the record thus indicates that it is

more likely than not that the applicant's great-grandfather was employed as a university professor for two academic years, in which case his departure from the United States would have been in the Spring of 1934 at the earliest and not in January. The AAO finds that the documents and affidavits submitted establish, by a preponderance of the evidence, that the applicant's grandmother was physically present in the United States for five years, two of which while after the age of 14, as is required by section 322 of the Act.

The burden of proof is on the applicant to establish his claimed citizenship by a preponderance of the evidence. 8 C.F.R. §§ 320.3(b)(1) and 341.2(c). The matter will be returned to the St. Albans Field Office for further processing and issuance of a certificate of citizenship.

ORDER: The appeal is sustained. The matter is returned to the St. Albans Field Office for further processing and issuance of a certificate of citizenship.