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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

E<sub>2</sub>



FILE:



Office: NEW ORLEANS, LA Date: **DEC 16 2010**

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:

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

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

The record reflects that the applicant was born on February 23, 1998 in Nigeria. The applicant's parents, as indicated on his birth certificate, are [REDACTED]. The applicant's parents were married in 1993. The applicant's mother became a U.S. citizen upon her naturalization on May 1, 2008. The applicant was admitted to the United States as a lawful permanent resident on December 19, 2000. He seeks a certificate of citizenship claiming that he acquired U.S. citizenship through his mother.

The field office director considered the application under section 322 of the Act, 8 U.S.C. § 1433. The director found, in relevant part, that the applicant was not residing outside the United States in his mother's custody as is required by section 322 of the Act, and that, because he was a lawful permanent resident of the United States, she was not temporarily present in the United States as required. The application was accordingly denied.

On appeal, the applicant states that he attends boarding school in Nigeria, but remains in his mother's legal and physical custody. *See* Statement Attached to Form I-290B, Notice of Appeal to the AAO.

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The applicant has not established her eligibility for a certificate of citizenship under section 322 of the Act for the reasons discussed below and his appeal will therefore be dismissed.

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 (9<sup>th</sup> Cir. 2005). The applicant was born in 1998. He was admitted to the United States as a lawful permanent resident in 2000. The applicant filed a Form N-600K, Application for Citizenship and Issuance of Certificate Under Section 322. Section 322 of the Act, 8 U.S.C. § 1433, as amended by the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), 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 applicant is not residing outside the United States in his U.S. citizen parent's legal and physical custody. He therefore is not eligible for a certificate of citizenship under section 322 of the Act. The AAO nevertheless notes that the applicant appears eligible for a certificate of citizenship under section 320 of the Act, 8 U.S.C. § 1431, as amended by the CCA.<sup>1</sup> The evidence in the record

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<sup>1</sup> Section 320 of the Act provides, in pertinent part, that

- (a) 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.

indicates that the applicant has remained in his U.S. citizen mother's legal and physical custody, and that their separation is due only to his enrollment in a boarding school abroad.

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 applicant has not met his burden of proof his eligibility for a certificate of citizenship under section 322 of the Act. His appeal will therefore be dismissed, without prejudice to his filing a Form N-600, Application for Certificate of Citizenship.

**ORDER:** The appeal is dismissed.

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- (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.