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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

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FILE: [REDACTED] Office: NEW YORK, NY Date: OCT 12 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.

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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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 District Director, New York City. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on April 23, 1996 in Syria. Her parents, [REDACTED] were married in Syria in 1982. They became U.S. citizens upon their naturalization on November 21, 2005 and August 30, 2007, respectively. The family resides in Syria. On August 19, 2006, the applicant was admitted to the United States as a lawful permanent resident. She was issued a U.S. passport on December 29, 2006. She seeks a certificate of citizenship pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The district director denied the application because the applicant was not temporarily present in the United States, as required by subsection 322(a)(5) of the Act, but was admitted as a lawful permanent resident.¹

On appeal, the applicant, through counsel, maintains that she is eligible for a certificate of citizenship. Counsel states that the applicant automatically acquired U.S. citizenship under both, or either, sections 320 and 322 of the Act, as acknowledged by the issuance of her U.S. passport.

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). 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), applies to the applicant’s case.

Section 322 of the Act provides, 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 [Secretary of Homeland Security] shall issue a certificate of citizenship to such applicant upon proof, to the satisfaction of the [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--

¹ The applicant had previously filed an application claiming that she acquired U.S. citizenship under section 320 of the Act. The district director denied that application finding that the applicant was not residing in the United States. See District Director’s denial dated January 4, 2008.

(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.

...

At issue in this case is whether a child admitted to the United States as a lawful permanent resident can satisfy the requirement in section 322(a)(5) of the Act of being “temporarily present in the United States pursuant to a lawful admission.” The regulation at 8 C.F.R. § 322.1 states that “*Lawful admission* shall have the same meaning as provided in section 101(a)(13) of the Act.” The term “admission” is defined in section 101(a)(13)(A) of the Act, 8 U.S.C. § 1101(a)(13)(A), as the “lawful entry of the alien into the United States after inspection and authorization by an immigration officer.” A lawful admission as defined in section 101 of the Act thus includes admissions in both immigrant and non-immigrant status. Hence, the term “temporarily present” at section 322(a)(5) of the Act refers to the length and nature of the child’s presence in the United States, not her immigration status. Accordingly, lawful permanent residents are not precluded from naturalization under section 322 of the Act. The director’s determination to the contrary is hereby withdrawn.

Nonetheless, the applicant is ineligible for a certificate of citizenship under section 322 of the Act because she is already a U.S. citizen and the record contains a copy of the applicant’s U.S. passport issued by the Department of State in 2006. *See Matter of Villanueva*, 19 I&N Dec. 101 (BIA 1984)

(a valid U.S. passport is conclusive proof of U.S. citizenship). The record indicates that the passport was issued under section 320 of the Act when the applicant was present in the United States after her admission as a lawful permanent resident. Section 322 of the Act, explicitly states that it only applies to individuals who have “not acquired citizenship automatically under section 320.” As the applicant has already acquired citizenship under section 320 of the Act, she is ineligible for naturalization under section 322 of the Act.

The applicant bears the burden of proof in these proceedings to establish her eligibility. *See* Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 322.3(b)(1). The applicant has failed to meet this burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.