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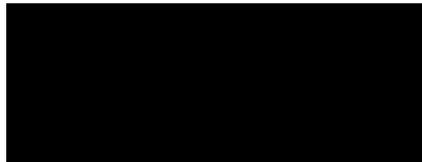
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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Services

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FILE: [REDACTED]

Office: ATLANTA

Date:

SEP 08 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:

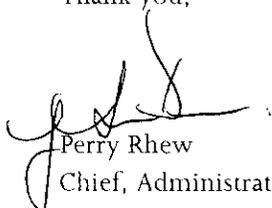


INSTRUCTIONS:

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 \$585. 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 Atlanta, Georgia Field Office Director 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 China on September 15, 1992. The applicant's parents were married in 1991 and divorced in 2000 in China. The applicant's mother, [REDACTED] became a U.S. citizen upon her naturalization in 2009. The applicant's biological father is not a U.S. citizen. The applicant has attended boarding school in China since 2002. The applicant's mother has resided in the United States since 2001. 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 determined that the applicant had failed to establish that she was residing outside the United States in the physical custody of her mother because the evidence indicated that the applicant's mother resided in the United States without the applicant, who was attending boarding school in China and residing with her grandmother in China when not in school. The field office director therefore found that the applicant was ineligible for citizenship under section 322 of the Act and denied the application accordingly.

On appeal, counsel asserts that the applicant's mother has had legal and physical custody of the applicant since her tenth birthday and that the applicant is now in the United States in her mother's physical custody. Counsel submits a brief and additional evidence on appeal.

Section 322 of the Act states, in pertinent part:

(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 [now Secretary of Homeland Security (Secretary)] 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 –

(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;

...

(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 section 322(a)(4) of the Act, which requires that the applicant “be residing outside of the United States in the legal and physical custody of” her U.S. citizen parent. Although the applicant’s parent’s divorce decree shows that the applicant’s mother was awarded legal custody of the applicant upon her tenth birthday in 2002, the applicant has failed to establish that she is residing outside of the United States in her mother’s physical custody. On the Form N-600K, Application for Citizenship and Issuance of Certificate under Section 322, the applicant listed her residence in China and her mother’s residence in the United States. The record contains ample evidence that the applicant’s mother has resided in the United States since 2001 and has made only brief visits to China during this time. In a letter dated November 17, 2009, the applicant’s mother explained that she and the applicant’s father decided that the applicant would attend boarding school in China through the eleventh grade and that she “granted [her] physical custody right” to the applicant’s grandmother and father in China. A November 16, 2009 letter from the applicant’s Chinese boarding school confirms that she has been enrolled in the school since 2002.

On appeal, counsel contends that the applicant is now in the United States in her mother’s physical custody and is eligible for citizenship under section 322 of the Act. The record shows that the applicant was admitted to the United States as a nonimmigrant visitor on July 5, 2010 with authorization to remain until January 13, 2011, but the evidence submitted on appeal fails to establish that the applicant is residing outside of the United States in her mother’s physical custody. Although the applicant’s mother’s 2009 letter indicated that the applicant would reside with her in the United States after completing the eleventh grade, a July 12, 2010 letter from the applicant’s mother states that the applicant is only temporarily residing with her mother “during her summer break at her boarding school” and the record contains no evidence that the applicant has withdrawn from her school in China. Even if the record showed that the applicant was now in the physical custody of her mother, the relevant evidence demonstrates that the applicant’s mother has resided in the United States since 2001.<sup>1</sup> Accordingly, the evidence does not show that the applicant is residing outside of the United States in the legal and physical custody of her mother, as required by section 322(a)(4) of the Act.

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<sup>1</sup> The applicant’s mother was admitted to the United States in 2001 as a nonimmigrant student. She married a U.S. citizen in May 2004 and became a lawful permanent resident in 2006.

On appeal, counsel further asserts that the applicant's mother's statement in 2009 that she had granted her right to physical custody to the applicant's grandmother and father was an error due to her limited proficiency in English and that the applicant's mother reserved the right and always intended for the applicant to eventually live with her in the United States. Letters from the applicant's father and grandmother submitted on appeal further state that the applicant's mother has had legal and physical custody of the applicant since 2002. The applicant's grandmother also explains that she only provided "temporary support" to the applicant while she attended boarding school in China.

The term "residence" is defined as a person's "place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent." Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33). In this case, although the intent of the applicant and her parents may have been otherwise, the record does not demonstrate that she is residing abroad in the physical custody of her mother. Accordingly, the applicant is ineligible for citizenship under section 322 of the Act.

The applicant bears the burden of proof in these proceedings to establish her eligibility for citizenship. 8 C.F.R. § 322.3(b)(1). The applicant has not met her burden and the appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.