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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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[redacted]

FILE: [redacted] Office: NEW YORK, NY Date: SEP 27 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 District Director, New York, New York, 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 in Yemen. The applicant's father, became a U.S. citizen upon his naturalization on He passed away in 2004. The applicant's mother, is not a U.S. citizen. She sought, and obtained, a court order appointing the applicant's older brother, the applicant's guardian. is a U.S. citizen. The applicant resides in Yemen with her mother. The applicant, through her guardian, filed this application claiming that she acquired U.S. citizenship through her father pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The district director denied the applicant's claim finding that she had failed to submit the requested evidence. Specifically, the director noted that the applicant had not provided a copy of the Yemeni guardianship laws. The application was accordingly denied.

On appeal, the applicant, through counsel, submits a copy of the Yemeni guardianship laws. Counsel maintains that is the applicant's legal guardian, and that the applicant is eligible for a certificate of citizenship pursuant to section 322 of the Act because she acquired U.S. citizenship through her U.S. citizen father.

Section 322 of the Act was amended by the Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), and took effect on February 27, 2001. CCA § 104. The CCA benefits all persons who had not yet reached their eighteenth birthdays as of February 27, 2001. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Because the applicant was under 18 years old on February 27, 2001, she meets the age requirement for benefits under the CCA.

Section 322 of the Act provides, in relevant part, that:

> (a) A parent who is a citizen of the United States (or, if the citizen parent has died during the preceding 5 years, a citizen grandparent or citizen legal guardian) 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 of Homeland Security], that the following conditions have been fulfilled:
>
> > (1) At least one parent (or, at the time of his or her death, was) is a citizen of the United States, whether by birth or naturalization.
> >
> > (2) The United States citizen parent--

(A) has (or, at the time of his or her death, had) 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 (or, at the time of his or her death, had) 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 (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 [Secretary of Homeland Security] with a certificate of citizenship.

The record establishes that the applicant is under the age of eighteen and the child of a U.S. citizen. The applicant's U.S. citizen parent passed away in 2004, less than five years prior to the filing of the instant application (which was filed in 2008). The record also contains a court document awarding guardianship of the applicant to his older brother, [redacted], a U.S. citizen. *See also* Lawyer Opinion Letter and Translated Sections of Yemeni Law. The court document further establishes that the applicant's mother, with whom the applicant resides, does not object to this application. The record also contains sufficient evidence of the applicant's U.S. citizen father's physical presence in the United States. The applicant therefore has established eligibility for a certificate of citizenship under section 322 of the Act.

8 C.F.R. § 322.3(b) provides that the burden of proof shall be on the claimant to establish the claimed citizenship. The applicant in this case has met her burden and the appeal will therefore be sustained.

ORDER: The appeal is sustained. The matter is returned to the New York City Field Office for further processing of the N-600 application.