

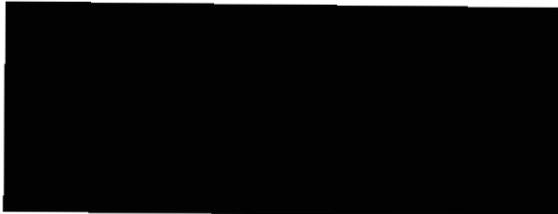
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



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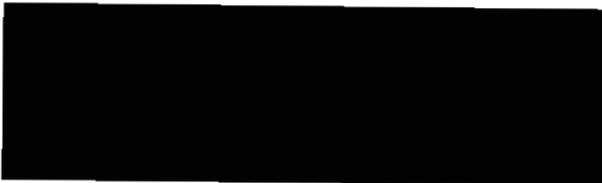
FILE: [REDACTED] Office: BALTIMORE, MD

Date: APR 01 2011

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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Baltimore, Maryland. The matter was appealed and is now before the Administrative Appeals Office (AAO). The appeal will be sustained.

The record reflects that the applicant was born on August 16, 2008 in Paraguay. The applicant's mother, [REDACTED] was born in Paraguay, but acquired U.S. citizenship at birth through her father, the applicant's grandfather. The applicant's grandfather was born in Chicago, Illinois on January 21, 1966. The applicant was admitted to the United States on a temporary visitors' visa in May 2010. She has since departed the United States. The applicant's mother seeks a certificate of citizenship on the applicant's behalf pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The district director denied the applicant's citizenship claim, finding that she was not maintaining her lawful status in the United States or residing abroad in her U.S. citizen parent's custody.

On appeal, the applicant, through counsel, maintains that she is eligible for a certificate of citizenship because she was in lawful status when the Form N-600K, Application for Certificate of Citizenship under section 322, was filed on her behalf. *See* Appeal Brief. Counsel further maintains that the applicant was at all times residing abroad in her U.S. citizen parent's custody. *Id.* Counsel explains that the applicant was admitted to the United States, with her parents, as a non-immigrant visitor in May 2010 and authorized to remain until November 2010. *Id.* In July 2010, the applicant was admitted to Children's National Medical Center in Washington, D.C.. *Id.* The Form N-600K, Application for Certificate of Citizenship under Section 322, was filed on her behalf in October 2010. *Id.* She departed the United States in December 2010.

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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 2008. 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 this case.

Section 322 of the Act provides 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 in this case has established that she is the child of a U.S. citizen, whose parent (the applicant's grandfather) was born and raised in the United States, and who is residing outside the United States in her U.S. citizen parent's legal and physical custody.

The director denied the application finding that the applicant was not maintaining lawful non-immigrant status or residing abroad with her U.S. citizen parent. These issues are moot now that the applicant has returned abroad from her brief visit to the United States. The AAO notes nonetheless that the applicant was in lawful non-immigrant status when the Form N-600K, Application for Certificate of Citizenship under Section 322, was filed on her behalf. *See* 8 C.F.R. § 322.3; *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971) (finding that a petitioner must establish eligibility at the time of filing). The AAO further notes that the applicant was residing and continues to reside outside the United States in her mother's legal and

physical custody. The family's visit to the United States in May 2010 was temporary and did not impact the applicant's residence in Paraguay or her mother's custody.

The applicant has established eligibility for a certificate of citizenship under section 322 of the Act. The appeal will therefore be sustained and the matter will therefore be returned to the Baltimore District Office for further processing and issuance of a certificate of citizenship.

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