

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

**PUBLIC COPY**

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**

E2

FILE:



Office: FAIRFAX, VA

Date:

**FEB 02 2011**

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, Fairfax, Virginia, 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 September 9, 1993 in the Ivory Coast. The applicant's father, [REDACTED], became a U.S. citizen upon his naturalization on November 14, 2006. The applicant's mother, [REDACTED], is not a U.S. citizen. The applicant's parents were married in 1988. The applicant's father resides in the United States. The applicant resides in Ivory Coast with his mother. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship through his father pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

Upon finding that the applicant was not residing in the custody of his U.S. citizen parent, the field office director denied the applicant's citizenship claim under section 322 of the Act. The director further noted that the applicant was also not eligible to acquire U.S. citizenship under section 320 of the Act, 8 U.S.C. § 1431, because he has not been admitted to the United States as a lawful permanent resident.

On appeal, the applicant's father maintains that section 322 of the Act does not require that he be residing outside the United States with the applicant. *See* Statement in Support of Appeal. In support of his claim, the applicant's father relies on the previously approved applications for certificate of citizenship filed on his other children's behalf. *Id.* The applicant's father states that he has legal and physical custody of the applicant. *Id.*

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 (9<sup>th</sup> Cir. 2005). The applicant was under the age of 18 years on the effective date of the Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000). Section 322 of the Act, as amended, therefore applies to his case.

Section 322 of the Act, as amended, 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.

...

In order to satisfy the requirements of section 322(a)(4) of the Act, the applicant must establish that he resides outside of the United States in the legal and physical custody of a U.S. citizen parent. The AAO notes that by the applicant's own statements in the Form N-600K, Application for Citizenship and Issuance of a Certificate under Section 322, and the documents submitted in support of the application, he is not residing with his U.S. citizen parent. The record clearly indicates that the applicant's father resides in Washington, D.C., and the applicant resides in Ivory Coast. The applicant therefore cannot establish eligibility for citizenship under section 322(a)(2)(4) of the Act because he is not residing outside the United States in the custody of his U.S. citizen parent.<sup>1</sup>

The applicant's father maintains that the citizenship claim must be granted on the basis of the grant of citizenship to his other children. U.S. Citizenship and Immigration Services (USCIS) is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Each application or petition is reviewed and adjudicated on the basis of the evidence in the record, as each application or

---

<sup>1</sup> The applicant is also not eligible for a certificate of citizenship under to section 320 of the Act, 8 U.S.C. § 1431. Section 320 of the Act requires, *inter alia*, that the applicant be residing in the United States in his U.S. citizen parent's legal and physical custody pursuant to an admission as a lawful permanent resident prior to his eighteenth birthday. The applicant in this case has not been admitted for lawful permanent residence and is not residing with his U.S. citizen parent. He is therefore ineligible for citizenship under section 320 of the Act. This appeal is dismissed without prejudice to the applicant filing a Form N-600, Application for Certificate of Citizenship, should he automatically acquire U.S. citizenship under section 320 of the Act prior to his eighteenth birthday.

petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

The burden of proof in citizenship cases is on the claimant to establish the claimed citizenship by a preponderance of the evidence. *See* Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2. The applicant is statutorily ineligible for U.S. citizenship under section 322 of the Act, or any other provision of law. He has not met his burden of proof, and his appeal will be dismissed.

**ORDER:** The appeal is dismissed.