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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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[REDACTED]

FILE: [REDACTED] Office: PHILADELPHIA, PENNSYLVANIA Date: FEB 18 2011

IN RE: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under section 322 of the Immigration and Nationality Act, 8 U.S.C. § 1433

ON BEHALF OF PETITIONER:

[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, 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, Philadelphia, Pennsylvania, 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 Italy on April 8, 1993, to married parents [REDACTED]. The applicant's mother was born in the United States on January 19, 1960. The applicant claims that his maternal grandfather was a U.S. citizen based on his naturalization on April 10, 1930. 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 director found that the applicant failed to provide sufficient evidence regarding his grandfather's U.S. citizenship and physical presence in the United States, and denied the application accordingly. On appeal, the applicant contends through counsel that he has adequately proven that his grandfather was a U.S. citizen with the requisite physical presence in the United States.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Section 322(a) of the Act, 8 U.S.C. § 1433(a), applies to children born and residing outside of the United States, and provides, in pertinent part, that:

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 [citizen parent]

(5) The child is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.

The applicant claims that his grandfather, ██████████ became a naturalized U.S. citizen on April 10, 1930, in the U.S. District Court for the Western District of Pennsylvania (Certificate Number ██████████. See *Form N-600K*, filed Sept. 8, 2008. In support of the claimed citizenship, the applicant submitted: a certified copy of a Certificate of Arrival for Naturalization Purposes for ██████████ dated January 13, 1928; a certified copy of a Declaration of Intention filed for ██████████ in the U.S. District Court for the Western District of Pennsylvania; and a certified copy of a Petition for Naturalization signed by ██████████ on March 12, 1928.

Here, the record shows that the applicant's grandfather applied for naturalization. However, the applicant has not submitted a copy of his grandfather's naturalization certificate, or other evidence that the petition for naturalization was granted. See 8 C.F.R. § 322.3(b)(1)(iv). Additionally, a search of available U.S. Citizenship and Immigration Services records did not provide any evidence of the applicant's grandfather's U.S. citizenship.

Although the applicant correctly contends that the list of citizenship documents provided in the regulation at 8 C.F.R. § 322.3(b)(1)(iv) is not exclusive, see *Brief on Appeal* at 2, the applicant must provide evidence that his grandfather's request for citizenship was granted. Further, the applicant's contention that the regulation does not apply to him because he is claiming U.S. citizenship through a grandparent instead of a parent, lacks merit. Specifically, the Act refers to a "United States citizen parent [who] has . . . a citizen parent." Section 322(a)(2) of the Act. Accordingly, the regulatory provision listing "[e]vidence of U.S. citizenship of parent" explicitly applies to all applications for citizenship under section 322 of the Act.

Because the applicant has not provided sufficient evidence of his grandfather's U.S. citizenship, the AAO finds that it would serve no purpose to determine whether the applicant's grandfather met the physical presence requirements set forth in section 322(a)(2)(B) of the Act.

The applicant bears the burden of proof in these proceedings to establish the claimed citizenship by a preponderance of the evidence. Section 322(a) of the Act, 8 U.S.C. § 1433(a); 8 C.F.R. § 322.3(b). Because the applicant has not met his burden of showing that he meets the requirements of section 322(a) of the Act, the appeal will be dismissed.

ORDER: The appeal is dismissed.