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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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FILE: [REDACTED] Office: INDIANAPOLIS, INDIANA Date: JAN 10 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:

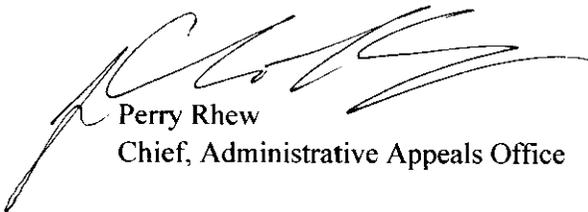
SELF-REPRESENTED

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, Indianapolis, Indiana, 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 Indonesia on May 27, 1994, to Indonesian citizens [REDACTED]. Her birth parents divorced, and her mother married U.S. citizen [REDACTED] on July 20, 2001. On November 23, 2009, an Indonesian court granted the [REDACTED] request to adopt the applicant, and the court pronounced [REDACTED] and [REDACTED] to be the applicant's legal parents. *See Adjudication of Civil Case*, issued by the Court of First Instance of Depok, Indonesia. 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 determined that the applicant did not meet the requirements for issuance of a certificate of citizenship under section 322 of the Act because she had not been in her adoptive father's legal custody for at least two years. The application was denied accordingly. On appeal, the applicant's father states that the applicant has been in his physical and legal custody since his 2001 marriage to the applicant's mother, a period of more than two years.

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;
...
- (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.

Additionally, section 322(a) of the Act “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).” Section 322(c) of the Act, 8 U.S.C. § 1433(c).

Section 101(b)(1) of the Act, 8 U.S.C. § 1101(b)(1), which defines the term “child,” contains the following three subsections applicable to adopted children:

(E)(i) a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years . . .

(F)(i) a child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 201(b) of this title, who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption . . .

(G) a child, under the age of sixteen at the time a petition is filed on the child’s behalf to accord a classification as an immediate relative under section 201(b) of this title, who has been adopted in a foreign state that is a party to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption done at The Hague . . .

Here, the applicable definition of the term child is found in section 101(b)(1)(E)(i) of the Act because the applicant does not meet the definition of an orphan under section 101(b)(1)(F)(i) of the Act, and she was not adopted under the Hague Adoption Convention as described in section 101(b)(1)(G) of the Act.

The immigration regulations related to applications for certificates of citizenship under section 322 of the Act are found at 8 C.F.R. § 322.1 – 322.5. Pursuant to these regulations, the phrase *legal custody* means “responsibility for and authority over a child.” 8 C.F.R. § 322.1. Further,

[i]n the case of an adopted child, a determination that a U.S. citizen parent has legal custody will be based on the existence of a final adoption decree.

Id. Accordingly, to satisfy the definition of the term child, the applicant must show that she was adopted while under the age of 16, that she has resided with Mr. [REDACTED] for at least two years, and that she has been in the legal custody of Mr. [REDACTED] for at least two years after the final adoption decree. Section 101(b)(1)(E)(i) of the Act; 8 C.F.R. § 322.1.

Here, the applicant was adopted by Mr. [REDACTED] when she was 15 years old, and the record reflects that she has resided with her adoptive father since 2001. However, less than two years have passed since the applicant’s adoption on November 23, 2009. Therefore, the applicant does not yet satisfy the requirements applicable to adopted children under section 101(b)(1)(E)(i) of the Act, and she

cannot meet the requirements for issuance of a certificate of citizenship under section 322 of the Act. *See* section 322(c) of the Act. Although the applicant's father contends that the applicant has been in his legal custody since 2001, pursuant to 8 C.F.R. § 320.1 as a child of divorced parents, *see Brief on Appeal*, this regulatory provision is inapplicable to adopted children seeking a certificate of citizenship under section 322 of the Act. Legal custody of an adopted child does not begin until the date of the final adoption decree. *See* 8 C.F.R. § 322.1 (determination of legal custody will be based on the final adoption decree).

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 her burden of showing that she meets the requirements of section 322(c) of the Act, the appeal will be dismissed. This dismissal is without prejudice to the filing of a Form N-600K in the future.

ORDER: The appeal is dismissed.