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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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Date: Office: PHILADELPHIA, PA

FILE:

IN RE: **JUL 12 2011**
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:



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,

Jerry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Philadelphia, Pennsylvania, and the matter came before the Administrative Appeals Office (AAO) on appeal. The appeal was dismissed on February 18, 2011. The applicant filed a Form I-290B, Notice of Appeal to the AAO, seeking reopening and reconsideration of the AAO's decision. The motion will be granted. The appeal will remain dismissed.

The record reflects that the applicant was born on April 8, 1993 in Italy. His mother, [REDACTED] was born in the United States on January 19, 1960. The applicant's maternal grandfather became a U.S. citizen upon his naturalization on April 10, 1930. The applicant's eighteenth birthday was on April 8, 2011. The applicant seeks a certificate of citizenship claiming that he derived U.S. citizenship through his mother and maternal grandfather pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.¹

The director denied the applicant's claim upon finding that he had failed to provide sufficient evidence of his grandfather's U.S. citizenship and physical presence in the United States. The AAO dismissed the applicant's appeal finding that the applicant had failed to establish his grandfather's

¹ 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.

citizenship. The applicant's motion to reopen and reconsider is accompanied by a copy of a document entitled Oath of Allegiance, admitting the applicant's grandfather to U.S. citizenship.

The applicant's motion will be granted. The additional evidence submitted is relevant to the applicant's claim that his grandfather is a U.S. citizen. Nevertheless, we affirm our prior decision to dismiss the applicant's appeal because, regardless of the evidence to demonstrate compliance with the statutory citizenship and physical presence requirements of section 322(a)(2) of the Act, the applicant is now over the age of 18 years old and therefore cannot acquire U.S. citizenship under sections 322(a)(3) and 322(b) of the Act.

The record in this case reflects that the applicant reached the age of 18 on April 8, 2011. Sections 322(a)(3) and (b) of the Act, and the regulation at 8 C.F.R. §322.2(a)(3), require that a certificate of citizenship application be filed, adjudicated, and approved with the oath of allegiance administered before the child's eighteenth birthday. The AAO therefore finds that the applicant is ineligible for citizenship under the cited provision because he is already 18.

ORDER: The motion is granted. The prior decision of the AAO, dated February 18, 2011, is affirmed. The appeal remains dismissed.