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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

PUBLIC COPY

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FILE: [redacted] Office: LAS VEGAS, NV Date: MAR 3 1 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:

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, Las Vegas, Nevada, 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 May 1, 2007 in Mexico. The applicant's mother, [redacted], was born in Mexico but acquired U.S. citizenship at birth through her U.S. citizen father. The applicant's maternal grandfather was born in Texas in 1945. The applicant seeks a certificate of citizenship claiming that he derived U.S. citizenship through his grandfather pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The field office director denied the applicant's claim upon finding that he had failed to establish that his grandfather had the physical presence in the United States required by section 322 of the Act.

On appeal, the applicant maintains that his grandfather was physically present in the United States from his birth in 1945 until 1962. The applicant submits a statement in support of the appeal.

Section 322 of the Act was amended by the Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), and took effect on February 27, 2001. CCA § 104. The applicant was born in 2007; section 322 of the Act, as amended, therefore applies to his 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 record indicates that the applicant's mother acquired U.S. citizenship through her father at birth. The applicant's maternal grandfather was born in Texas in 1945. The evidence submitted, however, does not establish that the applicant's grandfather was physically present in the United States for a five year period at least two of these years being after he attained the age of 14.

The record contains, in relevant part, the following: the applicant's birth certificate, his parents' marriage certificate, his mother's birth certificate and U.S. passport, his grandfather's birth certificate and U.S. passport. The record also contains a letter verifying that the applicant's grandfather had his [redacted] ceremony in El Paso, Texas in 1958 and school records indicating that the applicant attended school in El Paso from 1956 to 1959, and from 1961 to 1962. The field office director calculated that the days spent in school during those years, as indicated in the school records submitted, accounted for 26 months all together. The record also contains an affidavit from a family friend stating that the applicant's grandfather resided in El Paso. The affidavit does not contain any details, including dates, when the applicant's grandfather was purportedly residing in El Paso. The evidence submitted does not account for five years of physical presence in the United States by the applicant's grandfather at least two of which were after he reached the age of 14. No additional evidence was submitted by the applicant on appeal.

The burden in these proceedings is on the applicant to establish eligibility for U.S. citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2. The applicant in this case has failed to meet his burden of proof. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.