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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

E2

[redacted]

DATE: MAY 05 2011 Office: INDIANAPOLIS, IN FILE: [redacted]

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, Indianapolis, Indiana, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record indicates that the applicant was born on May 13, 2003 in Germany. She was adopted on June 15, 2009 by the applicant's grandparents. were the applicant's foster parents beginning in July 2005. The applicant's grandparents are native-born U.S. citizens. The applicant seeks a certificate of citizenship claiming that she derived U.S. citizenship through her grandparents pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The field office director denied the application upon finding that the applicant had not been in her adopted parents' legal custody for the two year period required by section 101(b) of the Act, 8 U.S.C. § 1101(b).

On appeal, the applicant, through her adopted parents, maintains that she has been in her adopted parents' legal custody since 2005. The applicant notes that her adoption record indicates that her adopted parents were her foster parents since 2005.

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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 CCA benefits all persons who had not yet reached their eighteenth birthdays as of February 27, 2001. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Because the applicant was under 18 years old on February 27, 2001, she meets the age requirement for benefits under the CCA.

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).

Section 101(b)(1) of the Act, 8 U.S.C. § 1101(b)(1), states, in pertinent part, that the term "child" means an unmarried person under twenty-one years of age who is-

(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 . . .

The regulation, at 8 C.F.R. § 322.1, provides that legal custody in the case of an adopted child "will be based on the existence of a final adoption decree."

The record indicates that the applicant was adopted on June 15, 2009. Although the adoption decree states that the applicant "has been raised as a foster child since July 2005," there is no indication that a legal proceeding resulted in the grant of custody to prior to the adoption in 2009. Indeed, the applicant's adoption document also indicates that her legal guardian was The AAO therefore cannot find that the applicant was in her adopted parents' legal custody prior to 2009.

"There must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." *Fedorenko v United States*, 449 U.S. 490, 506 (1981). 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 §§ 322.3(b)(1) and 341.2. The applicant has failed to meet her burden of proof, and her appeal will be dismissed.

ORDER: The appeal is dismissed.