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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



Date: **AUG 16 2012**

Office: DES MOINES, IA

FILE: 

IN RE:

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:

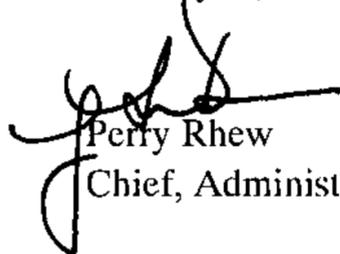
SELF-REPRESENTED

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, Des Moines, Iowa. The matter was appealed and is now before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The record reflects that the applicant was born in Canada on March 21, 1995. Her father, Sergey Zimin, became a U.S. citizen upon his naturalization on January 19, 2011. The applicant resides in Canada with her mother. The applicant's mother is not a U.S. citizen. The applicant's father resides in the United States. He seeks, on the applicant's behalf, a certificate of citizenship 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 citizenship claim finding that she was not residing abroad in her father's custody. On appeal, the applicant's father maintains that he was awarded joint custody of the applicant upon his divorce and that the applicant wishes to reside in the United States with him. See Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO.

The applicant, through her father, requests oral argument. The AAO has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. See 8 C.F.R. § 103.3(b). In this instance, the written record of proceeding fully represents the facts and issues in this matter that can be adequately addressed in writing. Consequently, the request for oral argument is denied.

The applicable law for derivative citizenship purposes is "the law in effect at the time the critical events giving rise to eligibility occurred." See *Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005). Section 322 of the Act was amended by the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000). The CCA, which took effect on February 27, 2001, is not retroactive, and applies only to persons who were not yet 18 years old as of February 27, 2001. Because the applicant was under the age of 18 on February 27, 2001, section 322 of the Act, as amended by the CCA, applies to her case. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

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).

In order to satisfy the requirements of section 322(a)(4) of the Act, the applicant must establish that she resides *outside of the United States in the legal and physical custody of her U.S. citizen parent*. The AAO notes that by the applicant's own statements in the Form N-600K, Application for Citizenship and Issuance of Certificate Under Section 322, she is not residing with her U.S. citizen parent. The record clearly indicates that the applicant's father resides in the United States, and the applicant resides in Canada. The Act defines the term "residence" as "the place of general abode . . . [a] principal, actual dwelling place in fact, without regard to intent." See Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33). The applicant is not residing with her father abroad, and therefore not residing outside the United States in the physical custody of her U.S. citizen parent. The applicant cannot establish eligibility for citizenship under section 322(a)(4) of the Act because she is not residing outside the United States in the physical custody of her U.S. citizen parent.

The AAO notes further that the applicant is also ineligible for citizenship under section 320 of

the Act, 8 U.S.C. § 1431, because she has not been admitted for lawful permanent residence.¹ “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 § 341.2. The applicant has not met her burden of proof, and her appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ Section 320 of the Act, 8 U.S.C. § 1431, provides, in pertinent part, that

- (a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:
- (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
 - (2) The child is under the age of eighteen years.
 - (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.