



U.S. Citizenship
and Immigration
Services



E2

Date: **OCT 15 2012** Office: LOS ANGELES, CA

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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. The Administrative Appeals Office is reopening your case. Pursuant to the regulation at 8 C.F.R. § 103.5(a)(5)(ii), you may submit a brief to our office at the address above within 33 days of the date of this decision.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Los Angeles, California, and came before the Administrative Appeals Office (AAO) on appeal. The matter was remanded to the director. Subsequent review of evidence now requires the AAO to reopen and reconsider these proceedings.

The record reflects that the applicant was born on [REDACTED] 2003 in the Philippines. The applicant's parents, [REDACTED] and [REDACTED] were not married to each other. The applicant's father was born in the Philippines in 1970, but acquired U.S. citizenship upon his parents' naturalization in 1985. The applicant's father passed away in 2005. The applicant, through his paternal grandmother, seeks a certificate of citizenship claiming that he acquired U.S. citizenship under 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 upon finding that the applicant was not legitimated and therefore did not fall within the definition of "child" in section 101(c) of the Act, 8 U.S.C. § 1101(c). The application was accordingly denied. On appeal, the applicant, through counsel, states that the applicant acquired U.S. citizenship at birth pursuant to section 309(a) of the Act, 8 U.S.C. § 1409. *See* Appeal Brief at 3-4.

The AAO remanded the matter with instructions to request that the applicant's grandmother file a Form N-600, Application for Certificate of Citizenship, on the applicant's behalf. *See* Decision of the AAO, dated October 26, 2010.

The record indicates that the applicant is residing in the Philippines.¹ Thus, the AAO must reopen the matter and determine, at the outset, whether USCIS has jurisdiction over the applicant's citizenship claim. Pursuant to section 104(a)(3) of the Act, 8 U.S.C. § 1104(a)(3), the Secretary of State is charged with "the determination of nationality of a person not in the United States." 8 U.S.C. § 1104(a)(3); *see also* 22 C.F.R. § 50.

Regardless of the reason why a person is currently residing outside the United States, unless specifically provided otherwise, his nationality claim must be determined by the Secretary of State. In that case, U.S. Citizenship and Immigration Services (USCIS) is without jurisdiction to determine the matter, and the applicant must present his citizenship claim to the U.S. Embassy or Consulate in his place of residence. Accordingly, the AAO withdraws its October 26, 2010 decision and reopens these proceedings for reconsideration of the applicant's appeal and the issuance of a new decision pursuant to the regulation at 8 C.F.R. § 103.5(a)(5)(ii). The applicant is afforded 33 days to submit a brief addressing the issues raised in this notice.² *Id.*; 8 C.F.R. § 103.5a(b). If the AAO receives no brief from the applicant or counsel at the expiration of 33 days, a decision will be issued based on the current record.

¹ Residence is defined in section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33), as "the place of general abode . . . the principal, actual dwelling place in fact, without regard to intent." Under this definition, the applicant is residing in the Philippines.

² The AAO has received counsel's correspondence dated August 8, 2012.

The applicant retains the burden of proof in these proceedings. *See* Section 322 (a) of the Act, 8 U.S.C. § 1433(a); 8 CFR § 322.3(b).

ORDER: The October 26, 2010 decision of the Administrative Appeals Office is withdrawn. The proceedings are reopened.