identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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

E2

[redacted]

Date: SEP 10 2012 Office: LOS ANGELES, CA 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 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 Los Angeles, California, Field Office Director (the director). 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 on , 2011 in Israel. His parents, and , were married in Israel in 2009. The applicant's parents were born in Israel, but acquired U.S. citizenship at birth. The applicant's maternal grandfather, , resides in California and is a U.S. citizen. The applicant seeks a certificate of citizenship pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The director denied the applicant's citizenship claim, finding that he was not residing outside the United States in the legal and physical custody of a U.S. citizen parent when he filed the application. On appeal, the applicant, through his grandfather, maintains that he is only temporarily present in the United States and plans to return abroad with his parents. *See* Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO.

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, as amended by the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), applies to his 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).

At issue in this case is whether the applicant is residing outside the United States in the legal and physical custody of his U.S. citizen parents. The instant Application for Citizenship and Issuance of Certificate Under Section 322 (Form N-600K) was filed with U.S. Citizenship and Immigration Services (USCIS) on February 2, 2012. At the time the application was filed, the applicant was physically present in the United States, having entered on [redacted], 2011 in B-2 nonimmigrant status. According to the applicant's maternal grandfather on appeal, the applicant and his parents are temporarily living with him in California, and he submits a copy of an itinerary for the family's flights from California to Israel in [redacted] 2012, as well as a short-term lease between the applicant's father and another individual for the period [redacted] 2012 through [redacted] 2012.

The regulation requires that the applicant establish eligibility for the benefit sought at the time of filing the application. 8 C.F.R. § 103.2(b)(1). The record fails to demonstrate that the applicant was residing outside of the United States in the legal and physical custody of his U.S. citizen parents when the Form N-600K was filed. The evidence that the applicant submits to establish his residence in Israel with his parents consists of a short-term lease and an itinerary for the family's flights to Israel in [redacted] 2012; however, these documents do not establish the applicant and his parents'

residence in Israel.[1] The short-term lease is not accompanied by the deed or ownership documentation of the property demonstrating that the property is owned by the applicant's parents; it also does not contain the address of the property.[2] While the airline itinerary establishes that the applicant and his family were booked on a flight from California to Israel in 2012, it does not demonstrate that the family would be returning to its residence abroad. Without evidence establishing their residence in Israel, such as property deeds, asset ownership documentation, or school or employment verification records, USCIS cannot conclude that when the Form N-600K was filed, the applicant was residing outside of the United States in his U.S. citizen parents' legal and physical custody. The applicant therefore was ineligible for a certificate of citizenship under section 322 of the Act as of the date of filing his application.

"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 his burden of proof, and his appeal will be dismissed.

ORDER: The appeal is dismissed.

---

[1] Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33) defines the term *residence* as "the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent."

[2] Any document containing foreign language that is submitted in support of a benefit request must be accompanied by a certified English translation. 8 C.F.R. § 103.2(b)(3).