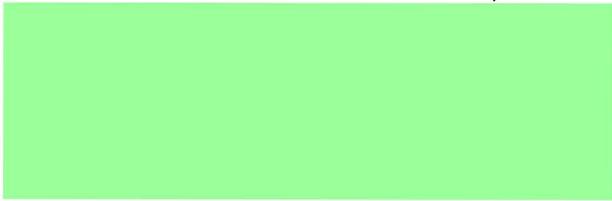




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE:

APR 26 2013

OFFICE: CLEVELAND, OH

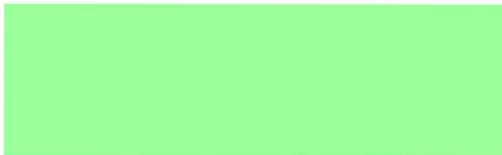
FILE:

IN RE:

APPLICATION:

Application for Certificate of Citizenship under former 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. 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

(b)(6)

DISCUSSION: The Application for Certificate of Citizenship (Form N-600) was denied by the Field Office Director, Cleveland, Ohio (the director), and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on a motion to reconsider. The motion to reconsider will be dismissed. The underlying application will remain denied.

The applicant was born on [REDACTED]. The applicant's father became a naturalized U.S. citizen on January 21, 1994, and the applicant was admitted into the United States as a lawful permanent resident on January 6, 1995. The applicant presently seeks a certificate of citizenship pursuant to former section 322 of the Immigration and Nationality Act (the former Act), as in effect prior to the enactment of the Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (October 30, 2000), 8 U.S.C. § 1433.

The director determined in a decision dated February 21, 2012, that the applicant failed to establish he derived U.S. citizenship through his father under section 321 of the former Act, 8 U.S.C. § 1432, as in effect prior to its repeal by the CCA. The citizenship application was denied accordingly. In a decision dated July 5, 2012, the AAO agreed that the applicant had failed to establish he derived U.S. citizenship through his father under section 321 of the former Act. The AAO found the applicant also failed to establish on appeal that he met all section 322 of the former Act requirements for citizenship before he turned eighteen. The appeal was dismissed accordingly.

Counsel asserts on motion to reconsider that the statutory provisions of section 322 of the former Act are ambiguous; that statutory language indicates section 322(b) oath of allegiance requirements may be complied with at any age, as long as section 322(a) requirements are met before an applicant turns eighteen; and that the AAO's interpretation of section 322 of the former Act was therefore erroneous.

The entire record was reviewed and considered in rendering a decision on the motion.

The regulations state in pertinent part at 8 C.F.R. § 103.5:

(a) Motions to reopen or reconsider

* * *

(3) Requirements for motion to reconsider. A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

(4) Processing motions in proceedings before the Service. A motion that does not meet applicable requirements shall be dismissed.

Section 322 of the former Act provided, in pertinent part:

(b)(6)

(a) Application of citizen parents; requirements

A parent who is a citizen of the United States may apply to the Attorney General [now the Secretary, Department of Homeland Security, "Secretary"] for a certificate of citizenship on behalf of a child born outside the United States. The [Secretary] shall issue such a certificate of citizenship upon proof to the satisfaction of the [Secretary] 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 child is physically present in the United States pursuant to a lawful admission.
- 3) The child is under the age of 18 years and in the legal custody of the citizen parent.

* * *

(b) Attainment of citizenship status; receipt of certificate

Upon approval of the application (which may be filed abroad) and . . . upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this chapter of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the [Secretary] with a certificate of citizenship.

Counsel asserts that the applicant met all requirements of section 322(a) of the former Act prior to his eighteenth birthday, and the AAO erroneously determined that in order to attain U.S. citizenship, he must also meet section 322(b) requirements prior to turning eighteen. Counsel refers to no precedent decisions or Service policy to support her assertions. Moreover, as referred to in the July 5, 2012 AAO decision, the Board of Immigration Appeals addressed section 322 of the former Act age requirements in *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 155 (BIA 2001), stating in pertinent part that:

[S]ection 322(a), as it was in effect at the time the respondent filed his Application for Certificate of Citizenship, clearly stated that an individual must be under 18 years of age at the time the application for such certificate is filed by the citizen parent of the individual. Similarly, the regulation set forth at 8 C.F.R. § 322.2(a) (1997) clearly states that "a child on whose behalf an application for naturalization has been filed . . . must: (1) Be unmarried and under 18 years of age, both at the time of application and at the time of admission to citizenship"

Counsel has failed to meet the requirements for a motion to reconsider as set forth in 8 C.F.R. § 103.5(a)(3). Accordingly, the motion will be dismissed.

ORDER: The motion to reconsider will be dismissed. The underlying application will remain denied.