



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **JUN 05 2013** 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:

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

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. On October 15, 2012, the matter was reopened *sua sponte* and the applicant was afforded an opportunity to submit a brief. The appeal will be dismissed.

The record reflects that the applicant was born on December 10, 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, submitted a Form N-600K, Application for Citizenship and Issuance of a Certificate under Section 322 (of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433).

On July 28, 2009, the field office director denied the application 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). On appeal, the applicant, through counsel, maintained that the applicant's acknowledgment by his father was sufficient to establish that he had acquired U.S. citizenship at birth pursuant to section 309(a) of the Act, 8 U.S.C. § 1409. See Appeal Brief at 3-4.¹

On October 26, 2010, the AAO remanded the matter to the field office director with instructions to request that the applicant submit a Form N-600, Application for Certificate of Citizenship, for consideration of his case under sections 301 and 309 of the Act. See Decision of the AAO, dated October 26, 2010.²

On October 15, 2012, the AAO reopened the matter *sua sponte*. Review of the evidence, specifically the fact that the applicant was not residing in the United States, required reopening and reconsideration of the applicant's claim. In accordance with 8 C.F.R. § 103.5(a)(5)(ii), the applicant was afforded 33 days in which to submit a brief or additional evidence.

On May 14, 2013, the applicant, through counsel, submitted a letter, via facsimile, describing his efforts to ascertain the status of his application. The letter does not address the issues raised in the AAO's October 15, 2012 decision. The record does not contain any brief, argument or evidence to overcome the jurisdictional deficiency in the applicant's case raised in the AAO's October 15, 2012 decision.

¹ In so doing, the applicant conceded that he was not legitimated by his father and abandoned his claim to U.S. citizenship under section 322 of the Act.

² The applicant did not submit a Form N-600, Application for Certificate of Citizenship, for consideration of his claim under sections 301 and 309 of the Act.

The record indicates that the applicant is residing in the Philippines.³ 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. § 50.⁴

Thus, 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. The applicant's appeal must therefore be dismissed.

ORDER: The appeal is dismissed.

³ 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.

⁴ Section 322 of the Act allows for a determination of U.S. citizenship by USCIS for an applicant residing abroad. The applicant in this case, however, previously conceded his ineligibility for citizenship under section 322 of the Act by admitting that he was not legitimated by his father and abandoning this claim.