



U.S. Citizenship
and Immigration
Services

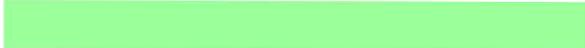
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DATE: OCT 21 2013

OFFICE: TAMPA, FL

FILE: 

IN RE: 

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Form N-600K, Application for Citizenship and Issuance of Certificate Under Section 322 (Form N-600K) was denied by the Field Office Director, Tampa, Florida (director), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in France on April 27, 1995. The applicant's mother is not a U.S. citizen. Her father was born in France on December 23, 1957, and U.S. passport evidence reflects that he is a U.S. citizen. The applicant's paternal grandfather was born in the United States on September 24, 1930, and he is a U.S. citizen. The applicant filed a Form N-600K on December 20, 2012. She seeks a Certificate of Citizenship pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

In a decision dated April 29, 2013, the director determined that the evidence contained in the record was insufficient to establish that the applicant qualified for U.S. citizenship under section 322 of the Act; moreover, the applicant was ineligible for derivative citizenship because she was not under the age of 18 when her Form N-600K application was adjudicated.¹ The application was denied accordingly.

On appeal the applicant asserts, through counsel, that she was under the age of eighteen and eligible for citizenship under section 322 of the Act when she filed her Form N-600K application. Counsel indicates that the applicant's father made several efforts to ensure that the Form N-600K would be processed expeditiously, but that U.S. Citizenship and Immigration Services (USCIS) unreasonably delayed processing of the Form N-600K by finding that the evidence submitted to support the applicant's citizenship claim was insufficient. Counsel submits additional documentation of the applicant's paternal grandfather's physical presence in the United States, and asks that the applicant's Form N-600K be approved.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d. Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The jurisdiction of the AAO is limited to that authority specifically granted through the regulations at Volume 8 of the Code of Federal Regulations (8 C.F.R.) section 103.1(f)(3)(iii) (as in effect on Feb. 28, 2003) and subsequent amendments. The AAO has no jurisdiction over unreasonable delay claims arising under the Act or pursuant to equitable claims. See generally, 8 C.F.R. § 103.1(f)(3)(iii) (2003) and 8 C.F.R. § 2.1 (2004). See also generally, *Fraga v. Smith*, 607 F.Supp. 517 (D.Or. 1985) (relating to federal court jurisdiction over such claims.)

It is well established that the requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and USCIS lacks statutory authority to issue a certificate of citizenship when an applicant fails to meet the relevant statutory provisions set forth in the Act. A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 885 (1988). Where an applicant has failed to establish statutory eligibility

¹ The applicant turned 18 on April 27, 2013, four months and nine days after filing the Form N-600K.

for U.S. citizenship, a certificate of citizenship cannot be issued. *See Fedorenko v. U.S.*, 449 U.S. 490, 506 (1981).

Section 322 of the Act applies to children born and residing outside of the United States, and provides, in pertinent part, 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 [Secretary] shall issue a certificate of citizenship to such applicant 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 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.

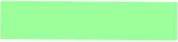
(4) The child is residing outside of the United States in the legal and physical custody of the [citizen parent]

(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 . . . 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 [Secretary] with a certificate of citizenship.

Here, the record reflects that the applicant turned eighteen on April 27, 2013, prior to USCIS adjudication of her Form N-600K application. The applicant therefore failed to meet the age requirements set forth in sections 322(a)(3) and 322(b) of the Act. Because the applicant is no longer under the age of eighteen, we do not reach the issues of whether she is residing outside of the

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United States in the legal and physical custody of her U.S. citizen father, or whether her father or paternal grandfather met the physical presence requirements set forth in section 322(a)(2) of the Act.

The applicant bears the burden of proof in these proceedings to establish her claimed citizenship by a preponderance of the evidence. 8 C.F.R. § 341.2(c). The applicant has not met her burden of proof in the present matter. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.