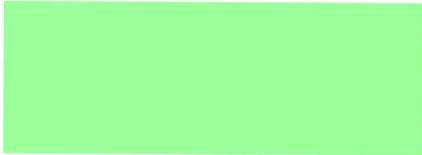




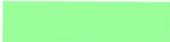
U.S. Citizenship
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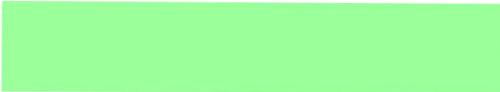


DATE: **DEC 16 2014**

OFFICE: MIAMI, FL

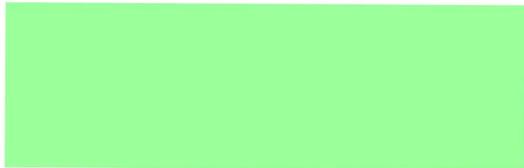
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IN RE:

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 (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.

Thank you,



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director of the Miami, Florida Field Office (the director) denied the Application for Citizenship and Issuance of Certificate under Section 322 (Form N-600K), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision shall be withdrawn and the matter remanded for entry of a new decision.

Pertinent Facts and Procedural History

The record reflects that the applicant was born in Colombia on October [REDACTED] and she was adopted in Colombia by U.S. citizen, [REDACTED], on February 24, 2009. She presently seeks a certificate of citizenship pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433, based on the claim that she derived U.S. citizenship through her adoptive father.

In a decision dated May 9, 2014, the director determined that the applicant failed to establish, by a preponderance of the evidence, that she meets the definition of "child" for immigration purposes, or that she resides in Colombia in the physical custody of her U.S. citizen parent as required under section 322(a)(4) of the Act. The application was denied accordingly. On appeal the applicant asserts, through counsel, that evidence establishes that she has resided in Colombia in the legal and physical custody of her adoptive father since 2009, and that she meets the requirements for derivative citizenship under section 322 of the Act. In support of the assertions, the applicant submits U.S. military service and Colombian employment evidence for her adoptive father, academic and medical insurance information, photographs, and affidavits from family members.

We conduct appellate review on a *de novo* basis.

Applicable Law

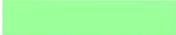
Section 322 of the Act, 8 U.S.C. § 1433(a), applies to children born and residing outside of the United States, and provides, in pertinent part, that:

(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 [of the Act]. The [Secretary of Homeland Security (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.

* * *

Section 322(a) of the Act applies 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).” Section 322(c) of the Act, 8 U.S.C. § 1433(c).

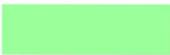
Section 101(b)(1)(E)(i) of the Act, 8 U.S.C. § 1101(b)(1)(E)(i), defines the term *child*, in pertinent part, as “a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years[.]” The regulation provides at 8 C.F.R. § 322.1(2) that, “[i]n the case of an adopted child, the determination that a U.S. citizen parent has legal custody will be based on the existence of a final adoption decree.” The term *residence* is defined in the Act as a person’s, “[p]lace of general abode; the place of general abode of a person means her principal, actual dwelling place in fact, without regard to intent.” Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33).

Because the applicant was born abroad, she is presumed to be an alien and bears the burden of establishing her claim to U.S. citizenship by a preponderance of credible evidence. *See Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008). *See also*, 8 C.F.R. § 341.2(c). The “preponderance of the evidence” standard requires that the record demonstrate that the applicant’s claim is “probably true,” based on the specific facts of each case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm’r. 1989)).

Analysis

Affidavit statements from the applicant’s grandparents reflect, in pertinent part, that the applicant has resided with, and been under the care of her U.S. citizen adoptive father since January 2009. The statements are corroborated by final adoption evidence reflecting that the applicant was adopted in Colombia in February 2009; employment evidence reflecting that the applicant’s adoptive father works in Colombia; and life and medical insurance documentation, and academic information reflecting that the family has lived together in Colombia since at least November 2011. Upon review, the record establishes, by a preponderance of the evidence, that the applicant has resided

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with her adoptive father in Colombia for at least two years. The applicant therefore meets the definition of “child” set forth in section 101(b)(1)(E)(i) of the Act.

The record also establishes that the applicant meets the derivative citizenship conditions set forth in sections 322(a)(1) through (4) of the Act. Moreover, as discussed above, the record establishes, by a preponderance of the evidence, that the applicant presently resides in Colombia in the legal and physical custody of her adoptive father.

Section 322(a)(5) of the Act requires the child to be temporarily present in the United States pursuant to a lawful admission. “[I]n certain circumstances, this evidence may be presented at the time of interview.” 8 C.F.R. § 322.3(b)(viii). Here, the record indicates that the applicant and her adoptive father are in Colombia. Accordingly, this matter will be returned to the field office to schedule an interview on the application.¹

ORDER: The director’s decision is withdrawn and the matter remanded for entry of a new decision.

¹ Pursuant to 8 C.F.R. § 322.3(a), the applicant may send a written request to the field office noting preferred interview dates.