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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

Date: MAR 31 2014 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:

[redacted]

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

Pertinent Facts and Procedural History

The applicant was born out of wedlock on September 12, 1996 in the Philippines, but her natural parents subsequently married when she was ten years old. The applicant was admitted to the United States as a lawful permanent resident on January 17, 2005 when she was eight years old. The applicant's mother became a naturalized U.S. citizen when the applicant was fifteen years old. The applicant seeks a certificate of citizenship pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433 because she is residing and attending school in the Philippines while her mother, from whom the applicant seeks to derive U.S. citizenship, currently resides in the State of California.

The director denied the applicant's Form N-600K because the record failed to establish that she was residing in the physical custody of her U.S. citizen mother. The applicant filed a timely appeal and submitted additional evidence.

Applicable Law

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), effective as of February 27, 2001, amended section 322 of the Act to include foreign-born children who did not automatically acquire citizenship under section 320 of the Act and who reside outside the United States with a U.S. citizen parent. *See* section 322(a)(4) of the Act ("the child is residing outside of the United States in the . . . physical custody of the [parent]").

Section 320 of the Act allows the automatic acquisition of U.S. citizenship when all of the following conditions have been met on or after February 27, 2001: the child has at least one parent who is a U.S. citizen by birth or through naturalization; the child is under 18 years of age; the child is an lawful permanent resident (LPR); and the child is residing in the United States in the legal and physical custody of the U.S. citizen parent.

Analysis

According to the record, the applicant's U.S. citizen mother resides in the State of California while the applicant attends school in the Philippines. Because the applicant's residence in the Philippines is not with her U.S. citizen mother, she is ineligible for U.S. citizenship under section 322 of the Act. However, the record contains a copy of the applicant's U.S. passport, valid from April 17, 2012 until April 16, 2017. In *Matter of Villanueva,* 19 I&N Dec. 101 (BIA 1984), the Board of Immigration Appeals held that a valid U.S. passport is conclusive proof of U.S. citizenship. Should the applicant wish to have her eligibility for a certificate of citizenship assessed under section 320 of the Act, she should submit an Application for Certificate of Citizenship (Form N-600) to U.S. Citizenship and Immigration Services (USCIS).

Conclusion

It is the applicant's burden to establish eligibility for a certificate of citizenship under section 322 of the Act. *See* Section 291 of the Act, 8 U.S.C. § 1361; 8 C.F.R. § 322.3(b)(1). Here, that burden has not been met.

ORDER: The appeal is dismissed. The application remains denied.