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**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF R-J-D-G-

DATE: OCT. 14, 2015

APPEAL OF NEW YORK FIELD OFFICE DECISION

APPLICATION: FORM N-600, APPLICATION FOR CERTIFICATE OF CITIZENSHIP

The Applicant, a native and citizen of Ireland, seeks a Certificate of Citizenship. *See* Immigration and Nationality Act (the Act) § 322, 8 U.S.C. § 1433, and § 301(g) of the Act, 8 U.S.C. § 1401(g). The Field Office Director, New York City, New York, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The record reflects that the Applicant was born in Ireland on [REDACTED] 1993. The Applicant's mother is a U.S. citizen by birth as she was born in [REDACTED] Massachusetts on [REDACTED] 1964. The Applicant's father is not a U.S. citizen. The Applicant currently resides abroad and has not been admitted to the United States as a lawful permanent resident or in any other status. The Applicant's parents were married on [REDACTED] 1986, prior to the Applicant's birth. The Applicant's maternal grandfather was born on [REDACTED], 1938, and became a U.S. citizen by naturalization on May 1, 1969. The Applicant seeks a certificate of citizenship indicating that he acquired U.S. citizenship at birth through his mother pursuant to section 301(g) of the Act, or that he derived citizenship through his maternal grandfather under section 322 of the Act.

On December 18, 2014, the Director determined that the Applicant did not establish eligibility for citizenship because his mother did not meet the residence requirements under section 301(g) of the Act. The Director denied the application accordingly. On appeal, the Applicant claims that he acquired U.S. citizenship at birth through his maternal grandfather pursuant to section 322 of the Act.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth. *See Chau v. INS*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001). The Applicant in this case was born in 1993. Accordingly, current section 301(g) of the Act controls his claim to acquired citizenship.

Section 301(g) of the Act states that the following shall be nationals and citizens of the United States at birth:

a person born outside the geographical limits of the United States . . . of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person,

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was physically present in the United States . . . for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years. . .

Therefore, the Applicant must establish that his mother was physically present in the United States for no less than five years before his birth on [REDACTED] 1993, and that at least two of these years were after his mother's 14th birthday. However, the Applicant admits that his mother has not resided in the United States since April 20, 1973, when she was [REDACTED] years old. Accordingly, the Applicant is not eligible for citizenship under section 301(g) of the Act.

In addition, the Applicant is not eligible to derive U.S. citizenship under section 320 of the Act, as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (CCA), which provides:

A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:

- (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
- (2) The child is under the age of eighteen years.
- (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

The Applicant is not eligible for citizenship under section 320 of the Act because he has never resided in the United States pursuant to a lawful admission as a permanent resident.

The Applicant lastly claims that he is eligible for citizenship through his U.S. citizen maternal grandfather under section 322 of the Act. 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 Attorney General shall issue a certificate of citizenship to such applicant upon proof, to the satisfaction of the Attorney General, 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--

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(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, except as provided in the last sentence of section 337(a), 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 with a certificate of citizenship.

The record reflects that the Applicant reached his eighteenth birthday on [REDACTED], prior to the January 14, 2014, filing of the Form N-600. The Applicant contends because he was under 21 years of age when he filed his N-600 application, and he then fit the definition of a child under section 101(c)(1) of the Act, he should still be eligible for citizenship under section 322 of the Act. However, sections 322(a)(3) and (b) of the Act, and the regulation at 8 C.F.R. §322.2(a)(3), require that a certificate of citizenship application be filed, adjudicated, and approved with the oath of allegiance administered before the child's eighteenth birthday. Accordingly, the Applicant is statutorily ineligible for a certificate of citizenship under these provisions because he is already older than 18.<sup>1</sup>

The Applicant additionally claims that regardless, he remains eligible for a certificate of citizenship, because the certificate is merely proof that a person acquired citizenship at birth. This claim is not persuasive, because although the Act contains provisions for acquisition of citizenship at birth, section 322 of the Act pertains to derivation of citizenship after birth, and requires that all conditions be met before a child's eighteenth birthday. Additionally, we note that the Applicant has not filed the required Form N-600K, Application for Citizenship and Issuance of Certificate Under Section 322.

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Because the Applicant is no longer under the age of 18, we do not reach the issues of whether or not he is residing outside of the United States in the legal and physical custody of his U.S. citizen mother, whether his grandfather met the physical presence requirements set forth in section 322(a)(2)(B) of the Act, or whether he is temporarily present in the United States pursuant to a lawful admission and is maintaining such lawful status.

It is the Applicant's burden to establish the claimed citizenship by a preponderance of the evidence. Section 341(a) of the Act, 8 U.S.C. § 1452(a); 8 C.F.R. § 341.2(c). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of R-J-D-G-*, ID# 13204 (AAO Oct. 14, 2015)