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

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

MATTER OF A-P-C-V-

DATE: OCT. 21, 2015

APPEAL OF HOUSTON FIELD OFFICE DECISION

APPLICATION: FORM N-600K, APPLICATION FOR CITIZENSHIP AND ISSUANCE OF
CERTIFICATE UNDER SECTION 322

The Applicant, a native and citizen of Mexico, seeks a Certificate of Citizenship. *See* Immigration and Nationality Act (the Act) § 322, 8 U.S.C. § 1433. The Director, Houston, Texas, Field Office, 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 Mexico on [REDACTED]. The Applicant's grandfather was born in the United States on [REDACTED] 1926. The Applicant's mother and father were born in Mexico. On February 26, 2014, the Department of State (DOS) issued the Applicant's mother a U.S. passport.

On March 10, 2015, the Director denied the Form N-600K, Application for Citizenship and Issuance of Certificate Under Section 322, finding that the Applicant did not acquire U.S. citizenship because she did not establish that her grandfather had physical presence in the United States as is required by section 322 of the Act.

On appeal, the Applicant maintains that the Director erred in denying her citizenship claim. In support of the appeal, the Applicant submits a letter and a copy of an affidavit from her grandfather.

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 was born in Mexico on March 14, 1997, and resides in Mexico. Section 322 of the Act is therefore applicable to her case. Section 322 of the Act, 8 U.S.C. § 1433, provides 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:

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- (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 applicant [citizen parent] (or, if the citizen parent is deceased, an individual who does not object to the application).
- (5) The child is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.

Section 322 of the Act requires that an applicant be under the age of 18 years old, reside abroad with his or her citizen parent, and be temporarily present in the United States pursuant to a lawful admission. The Applicant resides abroad with her parents. However, the Applicant has not shown that she is temporarily present in the United States pursuant to a lawful admission. Additionally, the Applicant has not established that her grandfather was physically present in the United States for a period of at least 5 years, at least 2 of which were after attaining the age of 14 years. She is therefore not eligible for U.S. citizenship under section 322 of the Act.

The Applicant contends that her grandfather was a U.S. citizen who was physically present in the United States for a period of at least 5 years, no less than 2 of which were after attaining the age of 14 years. In support of this contention she submits her grandfather's U.S. birth certificate, a sworn affidavit, and copies of contemporaneous evidence of her grandfather's presence in the United States. The Applicant's grandfather's U.S. birth certificate reflects that he was born in New York on [REDACTED] 1926. The Applicant's grandfather signed a January 19, 1995, sworn affidavit claiming that he resided in the United States from August 23, 1926, to September 1932, July 1932 to July 1939, July 1945 to February 8, 1947, and June 1950 to August 1953. The affidavit indicates that the Applicant's grandfather resided in Mexico after August 1953 with only short trips to the United States thereafter. The record also contains contemporaneous documentation of the Applicant's grandfather's presence in the United States. School records for the Applicant's grandfather indicate he spent 20 weeks in the United States in the 1942 to 1943 school year, 40 weeks in the United States in the 1943 to 1944 school year, and another 40 weeks in the United States in the 1944 to 1945 school year. The Applicant's grandfather's U.S. military records, including movement orders, travel orders, and discharge certificate establish that he was present in the United States from July 19, 1945, until January 3, 1946, and from January 23, 1947, until February 8, 1947. The Applicant's grandfather's life insurance premium receipts establish that he was present in the United States from January 1950 until June 1950, and November 1950 to December 1950, which is also supported by

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the Applicant's grandfather's school records which indicate that he completed studies in the United States on February 15, 1950, and June 21, 1950. The documentation of record thus establishes that the Applicant's grandfather has a little over 3 years of physical presence in the United States after he turned [REDACTED] years of age in 1940.

However, there is no contemporaneous evidence demonstrating that the Applicant's grandfather was present in the United States during the rest of his claimed physical presence. Nor is there other documentation, such as details on his other claimed time in the United States, or affidavits from family members and friends, in support of these claims. As such, although the Applicant has established that her grandfather was physically present in the United States for 2 years after the age of 14, and a little over 3 years overall, the record does not contain sufficient evidence to show that he has the requisite 5 years of total physical presence under section 322 of the Act.

We note that the Applicant does not claim that her mother has the necessary physical presence under section 322(a)(2)(A) of the Act, nor does the record support this conclusion. In fact, the grandfather specifically indicates in his affidavit that the Applicant's mother was not physically present in the United States for 5 years, 2 of which were after the age of 14. As such, we further find the record does not establish that the Applicant is eligible to acquire citizenship under section 322 of the Act through her mother.

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 A-P-C-V-*, ID# 14142 (AAO Oct. 21, 2015)