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

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

MATTER OF M-M-

DATE: MAR. 2, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

In April 2013, the Applicant's U.S. citizen mother sought on the Applicant's behalf a Certificate of Citizenship. Under section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433, a U.S. citizen parent may apply for a Certificate of Citizenship on behalf of a child residing outside the United States if the child is residing in the U.S. citizen parent's custody, and that parent had been physically present in the United States for 5 years, 2 of which were after the parent turned 14 years old. Born on [REDACTED] the Applicant was [REDACTED] years old in April 2013 and she was living in Italy with her mother.

In June 2013, the Director of the Albany Field Office denied the application, determining that the Applicant was not a "child" as defined at section 101(c) of the Act, 8 U.S.C. § 1101(c), because she was not legitimated by her father prior to her 16th birthday. One month later, and while she was still under the age of 18, the Applicant timely appealed the Director's denial of her application; however, the Director did not forward the appeal to our office until 3 years later in July 2016, which was well after the Applicant's 18th birthday on [REDACTED].

We issued our decision on the Applicant's appeal on August 18, 2016. In this decision, we found that the Director erred in requiring the Applicant, whose citizenship claim was through her U.S. citizen mother, to demonstrate that she was legitimated by her non-citizen father, and withdrew that portion of the Director's decision. Nevertheless, we ultimately dismissed the appeal, stating that the Applicant, who was 21 years old in [REDACTED] could not satisfy the eligibility criterion at subsection 322(a)(3) of the Act, which states: "The child is under the age of eighteen years."

In [REDACTED] 2016, the Applicant filed a complaint in the U.S. District Court for the [REDACTED] of New York.<sup>1</sup> The complaint alleged that: the Director improperly denied her application in 2013, when she met age and all other requirements for a Certificate of Citizenship under section 322 of the Act; and but for the Director's error and delay in forwarding her appeal to our office, she would have been granted a Certificate of Citizenship while she was under the age of 18. On [REDACTED] 2017,

<sup>1</sup> Civil Action No. [REDACTED]

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the District Court Judge signed a Joint Stipulation of Dismissal Without Prejudice. Based upon that stipulation, we now *sua sponte* reopen our prior decision to sustain the appeal.

**ORDER:** The appeal is sustained and the matter remanded to the Director for the issuance of a Certificate of Citizenship to the Applicant.

Cite as *Matter of M-M-*, ID# 431813 (AAO Mar. 2, 2017)