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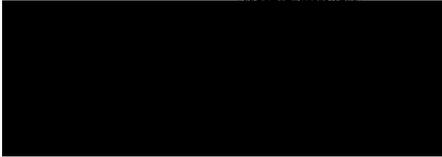
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

EG



FILE: [REDACTED] Office: SEATTLE, WASHINGTON Date: APR 01 2005

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under § 322 of the Immigration and Nationality Act; 8 U.S.C. § 1433.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Seattle, Washington and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Canada on January 29, 2001. The applicant's father was born in Bermuda; however, he is a U.S. citizen. The applicant's mother is not a U.S. citizen. The applicant presently resides in Canada with both parents, and she has not been admitted into the United States. She seeks a certificate of citizenship pursuant to § 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The district director determined that the applicant did not meet the definition of "child" set forth in section 101(b)(1)(E)(i) of the Act, 8 U.S.C. § 1101(b)(1)(E)(i), because she had not been in the legal custody of her father for two years at the time of her application for the certificate of citizenship. The record reflects that the applicant was adopted on October 9, 2001, and she filed her application on June 24, 2003. Accordingly, the director concluded that the applicant failed to meet all the requirements of § 322 of the Act at the time of filing. The application was therefore denied.

On appeal, the applicant, through her father, asserts that she had been in the legal custody of her father for two years at the time of her application, since she was given over to the custody of her adoptive parents on January 31, 2001, and she filed her application on June 24, 2003.

Section 322 of the Act applies to children born and residing outside of the United States and states, 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 [now Secretary, Homeland Security "Secretary"] shall issue a certificate of citizenship to such applicant upon proof, to the satisfaction of the Attorney General [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 applicant

(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 [now Citizenship and Immigration Services, "CIS"] 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 [Secretary] with a certificate of citizenship.

(c) Subsections (a) and (b) shall apply 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 101(b)(1)(E) of the Act states, in pertinent part, that the term "child" means an unmarried person under twenty-one years of age who is-

(i) [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: Provided, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act; or

As noted above, the applicant, through her father, states that the transfer of custody effectuated by Family Services of Greater Vancouver on January 31, 2001 constituted her entrance into the legal custody of her adoptive parents. Legal custody, however, vests "by virtue of either a natural right or a court decree". See *Matter of Harris*, 15 I&N Dec. 39 (BIA 1970). The adoption agency's transfer of custody is not the equivalent of a court decree. The court decree in the matter of legal custody was issued on October 9, 2001; hence the AAO finds that the district director was correct in his determination that the applicant had not yet met the two-year minimum legal custody requirement set forth above at the time of filing her application.

The present AAO decision is made without prejudice to the applicant's filing a new application for a certificate of citizenship, since, as of this date, she has been residing in the legal custody of her adoptive parents for over two years. It must be noted that, if the applicant chooses to reapply, prior to any grant of U.S. citizenship, the applicant will be required to comply with the provisions outlined at § 322 above.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant has not met her burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.