

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

EB

[REDACTED]

FILE:

Office: NEW YORK, NEW YORK

Date: **MAR 10 2005**

IN RE:

Applicant: [REDACTED]

APPLICATION:

Application for Certificate of Citizenship under Section 322 of the former 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.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

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

The record reflects that the applicant was born on July 13, 1982, in Karachi, Pakistan. The applicant's father, [REDACTED] was born in Pakistan on January 7, 1953, and he became a naturalized U.S. citizen on June 27, 1996, when the applicant was thirteen years old. The applicant's mother, [REDACTED], was born in Pakistan on July 5, 1957, and she is not a U.S. citizen. The applicant's parents married in Pakistan on October 31, 1980. The applicant presently seeks a certificate of citizenship pursuant to section 322 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1433.

The district director concluded that the applicant was statutorily ineligible for a certificate of citizenship under section 322 of the former Act because she turned eighteen years old prior to final adjudication of her application. The application was denied accordingly.¹

On appeal, the applicant indicates that she was under the age of eighteen when she filed her citizenship application, and that she is therefore entitled to citizenship.

The AAO notes that the requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and that U.S. Citizenship and Immigration Services (CIS) lacks authority to issue a certificate of citizenship when an applicant fails to meet the relevant statutory provisions set forth in the Act. *See generally, Iddir v. INS*, 301 F.3d 492 (7th Cir. 2002). The AAO therefore finds that the applicant's eligibility for citizenship under section 322 of the former Act is not affected by CIS processing delays, and that in order to obtain a certificate of citizenship, the applicant must establish that she fully meets section 322 of the former Act requirements.

Section 322 of the former Act provides, in pertinent part:

(a) Application of citizen parents; requirements

A parent who is a citizen of the United States may apply to the Attorney General [now the Secretary, Homeland Security, "Secretary"] for a certificate of citizenship on behalf of a child born outside the United States. The Attorney General [Secretary] shall issue such a certificate of citizenship 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 child is physically present in the United States pursuant to a lawful admission.

¹ The AAO notes that the Child Citizenship Act of 2000 (CCA), which took effect on February 27, 2001, amended sections 320 and 322 of the Act. The provisions of the CCA are not retroactive, however, and the amended provisions of section 320 and 322 of the Act, apply only to persons who were not yet eighteen-years-old as of February 27, 2001. Because the applicant was over the age of eighteen, on February 27, 2001, she is not eligible for the benefits of section 320 of the amended Act. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

- 3) The child is under the age of 18 years and in the legal custody of the citizen parent.

....

- b) Attainment of citizenship status; receipt of certificate

Upon approval of the application . . . [and] upon taking and subscribing before an officer of the Service [CIS] within the United States to the oath of allegiance required by this chapter 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.

The applicant failed to establish that her citizenship application was approved by the Immigration and Naturalization Service (now Citizenship and Immigration Services, CIS) and that an oath of allegiance was taken before her eighteenth birthday.

8 C.F.R. § 341.2(c) provides 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.²

² The AAO notes that the present decision is without prejudice to the applicant's filing, if eligible, an N-400, Application for Naturalization pursuant to section 316 of the Act, 8 U.S.C. § 1427.