

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



ELO

FILE: [REDACTED]

Office: NEW YORK, NY

Date: **MAY 23 2005**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Section 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.

Pol

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Interim 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 in Russia on November 18, 1983, and that she is a citizen of Tunisia. The applicant's father, ~~Abdelaziz Lamouehi~~ was born in Tunisia and he became a naturalized U.S. citizen on July 13, 2001, when the applicant was seventeen years old. The applicant's mother, ~~Rafika Abdelli~~, was born in Tunisia, and she is not a U.S. citizen. The record reflects that the applicant's parents married in Tunisia on June 12, 1969. The applicant was admitted into the United States pursuant to a lawful admission for permanent residence on July 30, 2002, when she was eighteen years old. The applicant presently seeks a certificate of citizenship pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The interim district director concluded that the applicant had failed to establish that she was admitted into the United States pursuant to a lawful admission for permanent residence prior to her eighteenth birthday as required by section 320 of the Act, 8 U.S.C. § 1431. The application was denied accordingly.

On appeal, the applicant, through her father, asserts that she qualifies for citizenship under section 322 of the Act, and that the interim district director erred in adjudicating her application pursuant to section 320 of the Act.

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 . . . 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 [Secretary] with a certificate of citizenship.

The AAO notes that all of the requirements set forth in section 322 of the Act must be satisfied in order to obtain citizenship under its provisions. Based on the evidence in the record, the applicant failed to establish that she resided outside of the United States in the legal and physical custody of her father (Mr. Lamouchi), subsequent to Mr. Lamouchi's naturalization as a U.S. citizen, and prior to the applicant's eighteenth birthday, and that prior to her eighteenth birthday, she was temporarily present in the U.S. pursuant to a lawful admission. The applicant did not meet the requirements set forth in section 322 of the Act prior to her eighteenth birthday. Accordingly, the applicant does not qualify for citizenship under section 322 of the Act

The AAO finds that the applicant also does not qualify for citizenship under section 320 of the Act. Section 320 of the Act states in pertinent part that:

- (a) 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 failed to establish that prior to her eighteenth birthday she resided in the United States in the legal and physical custody of her U.S. citizen father pursuant to a lawful admission for permanent residence. Accordingly, the applicant does not qualify for citizenship under section 320 of the Act.

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. *See also* § 341 of the Act, 8 U.S.C. § 1452. The applicant has not met her burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.