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U.S. Citizenship
and Immigration
Services

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EG



FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: MAR 09 2006

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born in Egypt on August 3, 1993 and was admitted to the United States with a K-4 nonimmigrant visa on June 19, 2004. The applicant's father became a naturalized U.S. citizen on September 4, 2002 and has been present in the United States since 1997. He became a U.S. citizen when the applicant was nine years old. The applicant's mother is not a U.S. citizen. The applicant filed a Form N-600K in order to obtain a certificate of citizenship pursuant to § 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The acting director erroneously applied the provisions of former § 321 of the Act, 8 U.S.C. § 1432 to the instant case. The AAO finds this error to be harmless, however, as the applicant does not qualify for a certificate of citizenship under any section of law. The acting director also analyzed the facts under current § 320 of the Act, 8 U.S.C. § 1431. The acting director concluded the applicant had failed to establish that he was admitted to the United States as a lawful permanent resident (LPR); hence he is ineligible for a certificate of citizenship. On appeal, the applicant urges the application of current § 322 of the Act. The AAO has reviewed the evidence in light of § 322 of the Act and concludes that the applicant has not established he meets the requirements for a certificate of citizenship described in § 322 of the Act.

The Child Citizenship Act of 2000 (CCA) amended former §§ 320 and 322 of the Act and repealed former § 321 of the Act on February 27, 2001. The amended provisions of the Act apply to persons who were not yet eighteen years old as of February 27, 2001. Because the applicant was seven years old on February 27, 2001, he is eligible for the benefits of the CCA and current §§ 320 and 322 of the Act.

Section 320 of the Act, as amended, permits a child born outside of the U.S. to automatically become a citizen of the United States upon fulfillment of the following conditions:

- (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.

As the acting director pointed out, the applicant was not admitted to the United States as an LPR; therefore, he does not qualify for a certificate of citizenship under § 320 of the Act. The applicant maintains that he is eligible for a certificate of citizenship pursuant to § 322 of the Act, which 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 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 with a certificate of citizenship.

The evidence on the record does not establish that the applicant child is residing outside the United States in his father's legal and physical custody. It appears that the applicant is present in the United States, where his father lives, pursuant to a nonimmigrant visa. Thus, the evidence does not establish the applicant meets the requirement set forth at § 322(a)(4) that the child reside outside the United States in his father's legal and physical custody. The applicant is therefore not eligible for a certificate of citizenship. The AAO notes that this decision is made without prejudice to the applicant's filing a new application for a Certificate of Citizenship if he becomes eligible.

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 that burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.