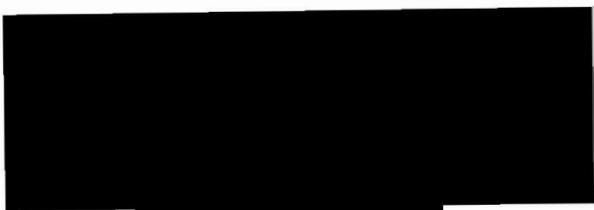




U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
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invasion of personal privacy

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EC

FILE:

Office: LOS ANGELES, CALIFORNIA

Date: MAR 20 2006

IN RE:

Applicant:



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, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant filed a Form N-600K to apply for a certificate of citizenship pursuant to § 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433. The applicant was born in Mexico on July 25, 1988. The applicant's father and grandfather are both U.S. citizens, and according to the N-600K, the applicant's grandfather lived in the United States from 1918 to 1941 and again from 1988 to the date of application. The applicant's father married his mother, a Mexican citizen, in 1985 in Mexico. According to the N-600K, the applicant's father resides in Los Angeles, while the applicant resides in Mexico and has not been admitted into the United States.

The district director concluded the applicant had failed to establish that he resided outside of the United States in his U.S. citizen father's legal and physical custody, as required by § 322 of the Act. The application was denied accordingly. On appeal the applicant, through his father, asserts that his father lives with his family, including his mother and siblings; therefore, the applicant's father has legal and physical custody of the applicant. The applicant contends that he is thus eligible for U.S. citizenship.

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.

The applicant indicated on the Form N-600K that his father resided in the United States and that he resided in Mexico. On appeal, the applicant asserts that his father resides with him, and that, except for one year, his father has lived with his family throughout his twenty year marriage. The residence claimed on appeal contradicts the information previously presented. The applicant also submits a copy of a lease agreement that his father signed on August 30, 2004 for a six month lease of a house in Mexico. The lease does not establish

that the applicant's father lives in the leased house, or that the applicant lives with him. The applicant does not meet the § 322(a)(4) requirement that he reside outside of the U.S. in the physical custody of his U.S. citizen parent. Moreover, the record does not establish that the applicant is temporarily present in the United States pursuant to a lawful admission, as required by § 322(a)(5) of the Act. The applicant is thus not eligible for a certificate of citizenship pursuant to § 322(a) 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. The applicant has not met that burden and the appeal will be dismissed.<sup>1</sup>

**ORDER:** The appeal is dismissed.

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<sup>1</sup> The present AAO decision is made without prejudice to the applicant's submitting a new application for a Certificate of Citizenship if he becomes eligible or, in the alternative, his father's filing a Petition for Alien Relative on the applicant's behalf.