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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: LOS ANGELES, CA

Date:

DEC 21 2007

IN RE:

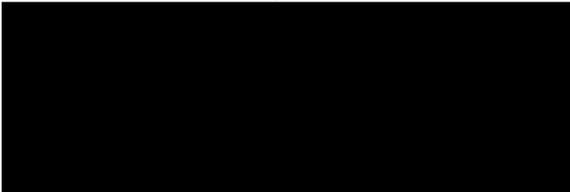
Applicant:



APPLICATION:

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

ON BEHALF OF APPLICANT:



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 cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
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 record reflects that the applicant was born on July 20, 1966 in Germany. The applicant was adopted by [REDACTED] on June 14, 1968 in Greece. The applicant's adoptive parents are native-born U.S. citizens. The applicant was admitted as a lawful permanent resident of the United States on July 8, 1968. On January 5, 2007, the applicant submitted a Form N-600, Application for Certificate of Citizenship seeking to derive U.S. citizenship through his parents. The applicant's reached the age of 18 on July 20, 1986.

The district director considered the applicant's citizenship claim under section 322 of the former Immigration and Nationality Act (the Act), 8 U.S.C. § 1433. Upon finding that the applicant had already reached the age of 18, the director denied the application.

On appeal, the applicant contends that he derived citizenship from his adoptive parents under section 321 of the former Act, 8 U.S.C. § 1432 (repealed). See Statement of the Applicant on Form I-290B, Notice of Appeal.

"The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth." *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9<sup>th</sup> Cir. 2000) (citations omitted). The applicant in this case was born in 1966. Section 322 of the former Act, 8 U.S.C. § 1433, is the applicable law in this case.<sup>1</sup>

Sections 320 and 321 of the former Act relate to the derivation of U.S. citizenship upon the naturalization of a parent. These sections are inapplicable to the applicant's case because his parents are both native-born U.S. citizens. On the other hand, section 322 of the former Act, 8 U.S.C. § 1433, provides, in relevant part, that:

- (a) A child born outside of the United States, on or both of whose parents is at the time of petitioning for the naturalization of the child, a citizen of the United States whether by birth or naturalization, may be naturalized if under the age of eighteen years and not otherwise disqualified from becoming a citizen . . . upon compliance with all the provisions of this title.

Section 322 of the former Act is therefore applicable to this case. The AAO notes that section 322 of the former Act, which applies equally to children adopted while under the age of 16, also requires that the child be residing permanently in the United States with the citizen parent pursuant to a lawful admission for permanent residence.

The record in this case reflects that the applicant reached the age of 18 on July 20, 1986. Section 322(a) of the Act, 8 U.S.C. § 1433(a)(3) and the regulations promulgated thereunder, at 8 C.F.R. §§ 322.2(a)(1) and

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<sup>1</sup> The Child Citizenship Act of 2000 amended sections 320 and 322 of the Act, 8 U.S.C. §§ 1431 and 1433, and repealed section 321 of the Act, 8 U.S.C. § 1432. Section 322 of the Act was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA benefits all persons who had not yet reached their 18th birthdays as of February 27, 2001. Because the applicant was over 18 years of age on February 27, 2001, he does not meet the age requirement for benefits under the CCA.

322.5, require that a certificate of citizenship application be filed, adjudicated, and approved with the oath of allegiance administered before the applicant's 18<sup>th</sup> birthday. The AAO therefore finds that the applicant is ineligible for citizenship under the cited provision because he is already 18.

The requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and CIS lacks statutory authority to issue a Certificate of Citizenship when an applicant fails to meet the relevant statutory provisions set forth in the Act. A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 885 (1988); *see also United States v. Manzi*, 276 U.S. 463, 467 (1928) (stating that "citizenship is a high privilege, and when doubts exist concerning a grant of it ... they should be resolved in favor of the United States and against the claimant"). Moreover, "it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect." *Berenyi v. District Director, INS*, 385 U.S. 630, 637 (1967).

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. In order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is "probably true" or "more likely than not." *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). Given the fact that the applicant is over the age of 18, he has failed to meet his burden of proof and is not eligible for citizenship under section 322 of the former Act, 8 U.S.C. § 1431. The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.