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U.S. Citizenship
and Immigration
Services

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FILE:

Office: PHOENIX, AZ

Date:

OCT 31 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:

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, Chief
Administrative Appeals Office

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

The record reflects that the applicant was born in the Philippines on May 24, 2001. The applicant's mother, [REDACTED] acquired U.S. citizenship at birth through her father, [REDACTED]. The applicant's father, [REDACTED], is a citizen of the Philippines and a lawful permanent resident of the United States. The applicant's parents were married on April 24, 1991 in the Philippines. The applicant seeks a Certificate of Citizenship pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The district director determined that the applicant had failed to establish that she was residing outside the United States in the legal and physical custody of a U.S. citizen parent. The district director further determined that there was insufficient evidence to establish the required physical presence in the United States of the applicant's mother or grandfather. The district director therefore found that the applicant was ineligible for citizenship and denied the application accordingly.

On appeal, the applicant's mother submits a statement explaining that she resides in the Philippines with the applicant and one of the applicant's siblings. Copies of her passports and a list of arrivals and departures to the Philippines accompany the applicant's appeal. A notarized declaration executed by the applicant's grandparents and proof of ownership of their residence are also included with the appeal.

Section 322 of the Act, 8 U.S.C. § 1433, was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA benefits all persons who have not yet reached their 18th birthdays as of February 27, 2001. Because the applicant was under the age of 18 on February 27, 2001, she meets the age requirement for benefits under the CCA.

Section 322 of the Act, 8 U.S.C. § 1433, applies to children born and residing outside of the United States, and provides 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 shall issue a certificate of citizenship to such applicant upon proof, to the satisfaction of the Attorney General, 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 [citizen parent] (or, if the citizen parent is deceased, an individual who does not object to the application).

(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.

(c) Subsections (a) and (b) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

In order to satisfy the requirements of section 322(a)(4) of the Act, the applicant must establish that she resides *outside of the United States in the legal and physical custody of his U.S. citizen parent*. The AAO is persuaded that the applicant is residing in the Philippines in the legal and physical custody of her U.S. citizen mother. The AAO thus concludes that the applicant has established eligibility for citizenship under section 322(a)(4) of the Act.

With respect to the physical presence by the U.S. citizen parent or the citizen grandparent required by section 322(a)(2)(B) of the Act, the AAO notes that the record contains a Report of Confidential Social Security Benefit Information and a letter from the applicant's grandfather's former employer, both verifying that the applicant's grandfather was employed in Hawaii. The AAO further notes that the applicant's grandfather's Certificate of Naturalization was issued in 1990, and indicates that the applicant's grandfather, a resident of Hawaii at the time, was naturalized in 1988. The AAO therefore finds that the applicant has established, by a preponderance of the evidence, that her U.S. citizen grandfather was physically present in the United States for five years, at least two of which were after attaining the age of 14.

The regulation at 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 met her burden in the present matter. The appeal will therefore be sustained.

ORDER: The appeal is sustained.