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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

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FILE:

OFFICE: NEW YORK, NY

DATE: JUN 13 2008

IN RE:

APPLICANT:

APPLICATION:

Application for Certificate of Citizenship under sections 322 and 320 of the  
Immigration and Nationality Act, 8 U.S.C. §§ 1433 and 1431.

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 black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Form N-600K, Application for Citizenship and Issuance of Certificate Under Section 322 (Form N600K) was denied by the District Director, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the Form N600K will be approved.

The applicant was born in Poland on March 25, 1991. He will turn eighteen on March 25, 2009. The applicant's father was born in Poland on September 6, 1965, and he became a naturalized U.S. citizen on August 23, 1995, when the applicant was four years old. The applicant's mother is not a U.S. citizen. The applicant's parents married on February 10, 1990, and they remain married. The applicant was admitted into the United States as a lawful permanent resident on June 5, 1997, when he was six years old. He presently seeks a certificate of citizenship pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433, based on the claim that he derived citizenship through his father.

The district director concluded the applicant had failed to establish that his father was physically present in the United States for at least five years, as set forth in section 322(a)(2)(A) of the Act. The district director additionally indicated that the applicant failed to establish that he was temporarily present in the U.S. pursuant to a lawful admission and that he was maintaining such lawful status, as required by section 322(a)(5) of the Act. The Form N600K was denied accordingly.

Through counsel, the applicant indicates on appeal that he lives in Poland with his father, and he indicates that additional federal tax evidence establishes his father has been physically present in the United States for five years.

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.

Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33), states that, “[t]he term “residence” means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent.” The Board of Immigration Appeals clarified in *Matter of Jalil*, 19 I&N Dec. 679 (BIA 1988), that the maintenance of financial interests, the retention of a house, or the intention to return does not establish a person’s “dwelling place in fact” for purposes of section 101(a)(33) of the Act.

The record contains the following evidence relating to the residence of the applicant and his father and to the applicant’s father’s physical presence in the U.S.:

A copy of the applicant’s father’s Certificate of Naturalization, reflecting that he became a naturalized U.S. citizen in New York on August 23, 1995.

A copy of [REDACTED]’s U.S. passport containing entry and exit stamps from Poland and the United States between 1996 and 1998.

An intermittent periodic tenancy lease agreement entered into by [REDACTED], commencing July 1, 1999 and continuing on a week-to-week basis, reflecting that: Mr. [REDACTED] is allowed intermittent use of the basement suite at [REDACTED], Forest Hills, New York; that his use shall be limited to an average of fourteen days a month; and that no third party is allowed to use the premises without prior written consent from the landlord.

Joint federal income tax returns filed by [REDACTED] and his wife for the years: 1997, 1998, 2003 and 2004. The tax returns contain [REDACTED], Forest Hill, New York address. The 1997 and 1998 income tax returns reflect that the applicant resided with his parents in New York.

The regulation provides at 8 C.F.R. § 341.2(c) that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. Under the preponderance of evidence standard, it is generally sufficient that the proof establish that something is probably true. *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989).

The AAO finds that the applicant has established by a preponderance of the evidence, that he is under the age of eighteen and that [REDACTED] became a naturalized U.S. citizen prior to the applicant’s eighteenth birthday. The applicant has therefore satisfied the requirements contained in section 322(a)(1) and (3) of the Act. The applicant additionally established by a preponderance of the evidence, that his father’s residence is

in Poland, and that the applicant resides in Poland the physical custody of his father, as set forth in section 322(a)(4) of the Act. Furthermore, the AAO finds that the applicant has established by a preponderance of the evidence, that his father has been physically present in the United States for at least five years, as required by section 322(a)(2)(A) of the Act. [REDACTED]'s Certificate of Naturalization reflects that he became a naturalized citizen, and resided in New York, on August 23, 1995. In order to become a naturalized U.S. citizen under section 316(a) of the Act, 8 U.S.C. § 1427(a), a person must reside continuously in the United States as a lawful permanent resident for at least five years prior to the filing of the application for naturalization. *See also*, 8 C.F.R. § 316.2(a)(3) (stating that eligibility for naturalization requires that the applicant reside continuously within the United States for at least five years after having been lawfully admitted for permanent residence.) The AAO finds that the Certificate of Naturalization evidence establishes, by a preponderance of the evidence, that the applicant's father has been physically present in the United States for five or more years, at least two years of which occurred after he turned fourteen, on September 6, 1979.

However, the AAO finds that the applicant has failed to establish by a preponderance of the evidence that he meets the section 322(a)(5) of the Act requirement that he is temporarily present in the United States pursuant to a lawful admission, and that he is maintaining such lawful status. The record reflects that the applicant was admitted into the United States as a lawful permanent resident at New York, on June 5, 1997. Statements contained in the record as well as U.S. federal income tax information for the years 1997 and 1998, reflect that the applicant resided permanently with his father in the U.S. between June 1997 and sometime in 1999. The applicant subsequently moved with his family to Poland in 1999, and the record contains no evidence to indicate or establish that the applicant has at any time returned to the U.S., or that he is temporarily present in the United States. Accordingly, the AAO finds that the applicant has failed to establish that he meets the requirements for derivative citizenship under section 322 of the Act.

Section 320 of the Act, provides 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 AAO finds that the applicant derived U.S. citizenship under section 320 of the Act. The applicant demonstrated, by a preponderance of the evidence that between June 1997, and sometime in 1999, he resided in the United States in the legal and physical custody of his U.S. citizen father pursuant to a lawful admission for permanent residence. The requirements contained in section 320(a)(1) and (3) of the Act have therefore been met. The applicant additionally established that he does not turn eighteen until March 25, 2009. The age requirement contained in section 320(a)(2) of the Act has thus also been met. The applicant therefore

established that pursuant to the provisions contained in section 320 of the Act, he automatically became a U.S. citizen after his admission into the United States in June 1997.

The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. The applicant has met his burden of proof in the present matter. The appeal will therefore be sustained and the Form N600 application will be approved.

**ORDER:** The appeal is sustained. The application is approved.