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U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

EG

**PUBLIC COPY**

[REDACTED]

FILE:

Office: ST. PAUL, MN

Date:

**JUN 13 2008**

IN RE:

Applicant:

[REDACTED]

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 that reads "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Field Office Director, St. Paul, Minnesota, denied the application for certificate of citizenship. The applicant timely filed an appeal. The director considered the matter as a motion to reopen.<sup>1</sup> The field office director dismissed the motion, and certified her decision to the Administrative Appeals Office (AAO). The director's decision on certification will be withdrawn. The appeal will be dismissed.

The record reflects that the applicant was born in Canada on August 12, 2001. The applicant's parents, as reflected on her birth certificate, are [REDACTED] and [REDACTED]. The applicant's parents were married on December 18, 2002. The applicant's father is a native-born U.S. citizen, born in Colorado on March 30, 1966. The applicant's paternal grandfather was born in Colorado on April 7, 1942. The applicant has been residing in the United States since January 20, 2003. The applicant's mother is not a U.S. citizen. The applicant presently seeks a certificate of citizenship under section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1422, based on the claim that she derived citizenship from her grandfather.

The field office director concluded that the applicant failed to establish eligibility for citizenship under either section 309 or 322 of the Act, 8 U.S.C. §§ 1409 or 1433. The director found that the applicant's father did not have the required physical presence in the United States to transmit citizenship under section 309 (and 301) of the Act. With regard to the applicant's eligibility under section 322 of the Act, the director found that the applicant had filed the wrong form and that she was in any event ineligible because she had not been properly admitted to the United States. The application was denied accordingly.

On appeal, the applicant's father states that the citizenship claim had been wrongfully denied. *See Statement from Applicant's Father on Form I-290B, Notice of Appeal to the AAO.* The record includes the applicant's father's response to the director's request for evidence upon reopening, but does not include a response to the notice of certification. The AAO notes that the record contains a copy of a letter from the applicant's father to Senator Byron Dorgan.

In order to establish that she derived U.S. citizenship at birth, the applicant must establish that her father satisfies the requirements set forth in section 301(g) of the Act, 8 U.S.C. § 1401(g). Because the applicant's parents were not married at the time of the applicant's birth, she must also establish that she meets the requirements set forth in section 309 of the Act, 8 U.S.C. § 1409.

Section 301(g) of the Act, 8 U.S.C. § 1401(g), states in pertinent part, that the following shall be a national and citizen of the United States at birth:

(g) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was 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: *Provided*, That any periods of honorable

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<sup>1</sup> The AAO notes that the regulations at 8 C.F.R. § 103.3(a)(2), allow the director to treat an appeal as a motion upon determining that action favorable to the applicant is warranted, or when the appeal is untimely. Otherwise, the appeal must be forwarded to the AAO. 8 C.F.R. § 103(a)(2)(iv).

service in the Armed Forces of the United States . . . by such citizen parent . . . may be included in order to satisfy the physical-presence requirement of this paragraph.

Section 309 of the Act, 8 U.S.C. § 1409, states in pertinent part that:

(a) The provisions of paragraphs (c), (d), (e), and (g) of section 301 . . . shall apply as of the date of birth to a person born out of wedlock if-

- (1) a blood relationship between the person and the father is established by clear and convincing evidence,
- (2) the father had the nationality of the United States at the time of the person's birth,
- (3) the father (unless deceased) has agreed in writing to provide financial support for the person until the person reaches the age of 18 years, and
- (4) while the person is under the age of 18 years-
  - (A) the person is legitimated under the law of the person's residence or domicile,
  - (B) the father acknowledges paternity of the person in writing under oath, or
  - (C) the paternity of the person is established by adjudication of a competent court.

In order to acquire U.S. citizenship under this provision, the applicant must establish that her father was present in the United States for a period of five years prior to 2001, at least two of which were after he attained the age of 14 (in 1980). The record suggests that the applicant's father resided in the United States for five years (from 1966 to 1971), but there is no evidence to demonstrate that he was present in the United States for the required 2 years after 1980 (and before 2001).<sup>2</sup> Therefore, the applicant did not acquire U.S. citizenship at birth through her father.

The question remains whether the applicant can derive U.S. citizenship from her paternal grandfather

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:

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<sup>2</sup> Because the applicant failed to establish her father's required physical presence under section 301 of the Act, the AAO need not determine whether she fulfilled the requirements of section 309 of the Act.

(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).

The record includes the applicant's grandfather's birth certificate and Canadian immigration identification card. These documents establish the applicant's grandfather's U.S. citizenship, and an entry into Canada on or about July 1971. There is no other evidence in the record, such as utility or rental receipts, school or medical records, financial or tax documents, or affidavits, corroborating the applicant's claim that her grandfather was physically present in the United States as required by section 322(a)(2)(B) of the Act. The AAO finds that the applicant has not established, by a preponderance of the evidence, that her grandfather was physically present for the period required by the Act.

Additionally, the AAO finds that the applicant has not satisfied the requirements of section 322(a)(4) of the Act. Section 322(a)(4) of the Act requires that the applicant be residing *outside of the United States* in the legal and physical custody of her U.S. citizen parent. The record reflects that the applicant is residing in the United States. The AAO must therefore conclude that the applicant cannot establish eligibility for citizenship under section 322 of the Act.

Further, the AAO finds that it is, at best, unclear whether the applicant was admitted to the United States pursuant to a lawful admission as required by section 322(a)(5) of the Act. “[I]t has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect. [The Supreme] Court has often stated that doubts ‘should be resolved in favor of the United States and against the claimant.’” *Berenyi v. District Director*, 385 U.S. 630, 671 (1967). Given the uncertainty about the applicant’s admission to the United States, she cannot meet her burden of proof with respect to section 322(a)(5) of the Act. The AAO notes that, even if she could establish that her admission was “lawful,” the record reflects that it was not “temporary.”

The AAO notes “[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship.” *Fedorenko v United States*, 449 U.S. 490, 506 (1981). 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). The applicant in this case has not met her burden. The appeal will therefore be dismissed.

**ORDER:** The director’s decision is withdrawn. The appeal is dismissed.