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

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[REDACTED]

FILE: [REDACTED] Office: NEW YORK, NY Date: **MAY 21 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.

Robert P. Wiemann

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The record reflects that the applicant was born in Greece on July 17, 1998. The applicant's mother, [REDACTED] is a native born U.S. citizen born on September 4, 1971. She resided in the United States until July 3, 1986. The applicant's grandfather, [REDACTED] became a U.S. citizen upon his naturalization on March 31, 1982. The applicant presently seeks a certificate of citizenship pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433, claiming to derive U.S. citizenship through his grandfather.

The district director denied the applicant's citizenship claim upon finding that he had failed to provide evidence of his grandfather's physical presence in the United States. The application was accordingly denied.

On appeal, the applicant, through his mother, maintains that his grandfather has been living in the United States for over 40 years. *See* Form I-290B, Notice of Appeal. In support of his appeal, the applicant includes a letter from the property manager at his grandfather's co-op building in New York stating that he "has resided in the building since November 4, 1981."

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).

The applicant has established that his mother and grandfather are U.S. citizens. He has also established that he resides abroad in his mother's custody. Nevertheless, the applicant has failed to demonstrate that he meets the requirements set forth in section 322(a)(2)(A) or (B) of the Act. The AAO finds that the applicant's mother was not physically present in the United States for two years after attaining the age of 14. The AAO further finds that the applicant has failed to meet his burden to prove that his grandfather was physically present in the United States for five years, two of which while over the age of 14.

With respect to evidence of the applicant's grandfather's physical presence, the record contains a letter from the co-op property manager, a copy of his grandfather's passports evidencing several trips abroad, a copy of his grandfather's naturalization certificate, his grandfather's 2006 federal income tax return (listing an income of \$84) and 2005 and 2006 New York resident income tax return, a copy of a 2006 Affidavit of Family Income, and his grandfather's social security benefit statements for the years 2003, 2005 and 2006.

The social security and tax evidence submitted by the applicant do not evidence his grandfather's physical presence in the United States for the required period. The property manager's letter evidences that the applicant's grandfather owns a co-op apartment, but does not demonstrate his physical presence in the United States. In order to demonstrate his grandfather's physical presence, the applicant could have submitted documents such as school transcripts, medical or employment records, or itemized social security statements of earnings during the relevant period. The evidence currently in the record does not indicate that the applicant's grandfather had the required physical presence in the United States.

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. 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 has not met his burden in the present matter. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.