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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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U.S. Citizenship  
and Immigration  
Services



EL

FILE: [REDACTED] Office: LOS ANGELES, CALIFORNIA Date: AUG 24 2009

IN RE: [REDACTED]

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

ON BEHALF OF PETITIONER:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office 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 December 1, 1996, in the Philippines. *See Birth Certificate for [REDACTED]* The applicant's mother was born in the Philippines on April 20, 1974. *See Birth Certificate for [REDACTED]* The applicant's mother acquired U.S. citizenship at birth through her father, a native and citizen of the United States. *See Letter from the U.S. Embassy in the Philippines, dated Nov. 19, 1998 (approving [REDACTED]'s application for registration as a U.S. citizen under section 301(a)(7) of the Act).* The applicant's parents were never married to each other. *See Form N-600K, Application for Citizenship and Issuance of Certificate Under Section 322, filed on Sept. 2, 2008.* The record contains an Affidavit of Acknowledgment of Paternity, signed by the applicant's parents on January 15, 1997, in the Philippines. *See Affidavit of Paternity.* The applicant seeks a certificate of citizenship based on the claim that she acquired U.S. citizenship at birth through her mother.

The Field Office Director found that the applicant was not eligible to apply for a certificate of citizenship because she did not meet the requirements under section 322(a) of the Immigration and Nationality Act (the Act). The application was denied accordingly.

On appeal, the applicant's mother states that she has full legal and physical custody over the applicant, and that they permanently reside together in the Philippines. *See Form I-290B, Notice of Appeal, dated Jan. 10, 2009.* Although the applicant indicated that she would submit a brief and/or additional evidence to the AAO within 30 days of filing the appeal, as of this date, the record contains no additional evidence. Therefore, the record is considered complete, and the AAO shall render a decision on appeal based on the existing record.

The AAO reviews these proceedings de novo. *See 5 U.S.C. 557(b)* ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.").

Section 322(a) of the Act, 8 U.S.C. § 1433(a), applies to children born and residing outside of the United States, and provides that:

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 1431 of this title. 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 [citizen parent] . . . .

(5) The child is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.

8 U.S.C. § 1433.

The applicant has not provided proof that she has fulfilled all of the conditions set forth in section 322(a) of the Act. First, under section 322(a)(2) of the Act, the applicant's mother must show that she was physically present in the United States for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years. Alternatively, the applicant must show that her grandfather was physically present in the United States for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years. The Application for Citizenship indicates that the applicant's mother was physically present in the United States from July 18, 2007, to September 20, 2008. *See Form N-600K, supra.* However, the applicant has not presented any evidence that her mother satisfies the five-year condition in section 322(a)(2)(A) of the Act. The Application for Citizenship also indicates that the applicant's U.S. citizen grandfather was physically present in the United States from September 24, 1953, to September 20, 2008. *See Form N-600K, supra.* However, the applicant has not presented any evidence proving that her grandfather satisfies the conditions set forth in section 322(a)(2)(B) of the Act.

Second, section 322(a)(4) of the Act states that the child must reside outside of the United States in the legal and physical custody of her U.S. citizen parent. The applicant has not provided any evidence that she resides outside of the United States in the custody of her mother. Third, section 322(a)(5) of the Act requires the applicant to be temporarily present in the United States pursuant to a lawful admission. There is no evidence in the record that the applicant has been in the United States pursuant to a lawful admission. In sum, the applicant has failed to show that she meets the conditions set forth under section 322 of the Act.

Additionally, the applicant has not provided evidence of her eligibility under section 309(c) of the

Act, 8 U.S.C. § 1409(c). Section 309(c) of the Act provides, in relevant part:

a person born, after December 23, 1952, outside the United States and out of wedlock shall be held to have acquired at birth the nationality status of his mother, if the mother had the nationality of the United States at the time of such person's birth, and if the other had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year.

8 U.S.C. § 1409(c). The record contains no evidence that the applicant's mother was physically present in the United States for a continuous period of one year before the applicant's birth.

A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 884 (1988). 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); *see also* 8 C.F.R. § 341.2(c) ("The burden of proof shall be upon 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 (Commr. 1989).

The AAO concludes that the applicant has failed to meet her burden to establish eligibility for citizenship under the Act. The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.