

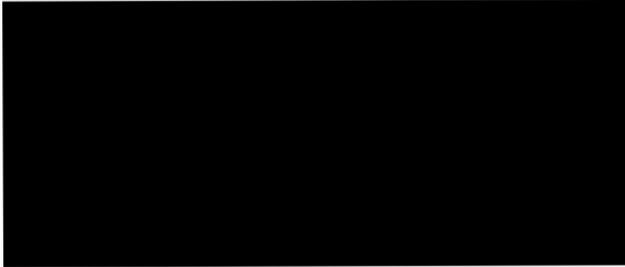
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: Office: LOS ANGELES Date: JUL 20 2009

IN RE: Applicant:
Beneficiary:



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.

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 beneficiary was born in Mexico on February 21, 1991. The applicant is his father, [REDACTED], who was born a U.S. citizen in Mexico on March 18, 1964. The beneficiary's mother, [REDACTED] is not a U.S. citizen. The beneficiary's parents married in Mexico on March 16, 1990. The beneficiary presently resides in Mexico and he has not been admitted to the United States. The applicant seeks a certificate of citizenship for the beneficiary pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The field office director concluded the applicant had failed to establish that the beneficiary resides outside of the United States in the legal and physical custody of his U.S. citizen father, as required by section 322 of the Act. The application was denied accordingly.

On appeal, the applicant asserted that he maintains a legal residence in Guadalajara, Mexico and returned there prior to filing the Application for Citizenship and Issuance of Certificate under Section 322 (Form N-600K) on the applicant's behalf. The applicant indicated that an address in Covina, California is listed as his address on the Form N-600K only for convenience in receiving correspondence at a location "which is the [the applicant's] home too, place where [he] live[s] for short periods of time, when [he] work[s] there."

The applicant submitted an unsigned copy of his 2007 tax returns and associated documents which contain his address in California and list the beneficiary as a dependent, copies of correspondence addressed to the applicant in Guadalajara, a copy of the applicant's marriage certificate, a copy of the front page of a Guadalajara newspaper dated November 28, 2006 concerning a ceremony related to the applicant's family, a copy of receipts from Mexico, a copy of the beneficiary's school records from Mexico, an unsigned letter from [REDACTED] of the Nuestra Señora de Huentitán Parish indicating that the applicant's family participates actively in church activities in Guadalajara.

On February 6, 2009, the AAO issued a Request for Evidence to the applicant.¹ In the RFE, the AAO stated that the evidence submitted failed to demonstrate that the beneficiary resides in the legal and physical custody of the applicant outside the United States. However, because of the possibility that the beneficiary automatically acquired U.S. citizenship at birth pursuant to section 301 of the Act, a question not previously addressed, the AAO requested that the applicant submit evidence demonstrating that he was physically present in the U.S. for five years between March 18, 1964 and February 8, 1999, and that two of the years occurred after March 18, 1978, when he turned fourteen.

In a response to the RFE dated April 27, 2009, the applicant has submitted numerous documents to demonstrate that the beneficiary resides in Mexico in his legal and physical custody, and that the beneficiary otherwise meets the requirements entitling him to naturalization and a certificate of citizenship under section 322 of the Act. The evidence submitted by the applicant in response to the RFE includes, but is not limited to, the following documents: an affidavit from the applicant in

¹ The AAO mistakenly referred to the beneficiary as the applicant in the RFE.

which he attests to his permanent residency in Mexico and temporary residency in the United States from February to September 2007 to “fix [his] citizenship in the [United States]”; birth certificates for the beneficiary, his father and his grandfather; marriage certificates for the applicant and his parents; various letters and other documents as proof that the beneficiary’s grandfather had the required physical presence in the United States; the applicant’s Mexican voter identification card; the applicant’s Mexican driver’s license; letters from the applicant’s employers in Mexico indicating that the applicant was employed in Mexico from January 2004 to January 2007, and then again after November 2007; the applicant’s Mexican school records; property tax records for property owned by the applicant in Mexico; Mexican school records for the beneficiary; and affidavits from friends and acquaintances attesting to the fact that the beneficiary resides in Mexico in the legal and physical custody of the applicant.

Section 322 of the Act applies to the naturalization of children born and residing outside of the United States and provides, 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.

(b) . . . Upon approval of the application . . . and . . . 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 State and shall be furnished by the Attorney General with a certificate of citizenship.

Section 101(a)(33) of the Act defines “residence” as the “principal, actual dwelling place in fact, without regard to intent.” In the RFE, the AAO found that the evidence submitted failed to show that the principal, actual dwelling place in fact of the applicant is not in the United States as

indicated on the Form N-600K and tax documents, or that the beneficiary resides in the applicant's physical custody in Mexico. In light of the evidence now submitted by the applicant, the AAO withdraws this finding. The evidence shows that the applicant's principal, actual dwelling place is in Mexico, and that the beneficiary resides there in the applicant's legal and physical custody. The evidence also shows that the applicant's 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.

However, because the applicant is now eighteen years of age, he cannot meet the requirements found in section 322(a)(5) and section 322(b) of the Act prior to his eighteenth birthday. Therefore, though the applicant has now demonstrated that the beneficiary meets the section 322(a)(4) requirement that he reside outside of the U.S. in the physical custody of his U.S. citizen parent, the application cannot be approved because the beneficiary is no longer under the age of eighteen. The AAO notes that this does not preclude the applicant from filing a Petition for Alien Relative (Form I-130) on the beneficiary's behalf.

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 not met his burden. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.