

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY



E
6

FILE: [REDACTED]

Office: NEW YORK, NY

Date:

JUL 29 2009

IN RE:



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 "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

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

The record reflects that the applicant was born in October 30, 2003 in China. She was adopted in 2004 by [REDACTED] and [REDACTED]. The applicant's adoptive father is a native born U.S. citizen. The applicant's parents were married in 1992. The family resides in England. On December 19, 2004, the applicant was admitted to the United States as a lawful permanent resident. She 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 she derived citizenship through her father.

The district director initially denied the applicant's citizenship claim, finding that she did not meet the requirement of section 322(a)(5) of the Act, 8 U.S.C. § 1433(a)(5), because she was not temporarily present in the United States. Specifically, the district director concluded that the applicant was ineligible for citizenship under section 322 of the Act because she was present in the United States as a lawful permanent resident. The application was accordingly denied.

Section 322 of the Act, 8 U.S.C. § 1433, was amended by the CCA, and took effect on February 27, 2001. The CCA benefits all persons who had not yet reached their 18th birthdays as of February 27, 2001. Because the applicant is under the age of 18, she meets the age requirement for benefits under the CCA.

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 AAO notes that section 320 of the Act, 8 U.S.C. § 1431, provides for the acquisition of U.S. citizenship by children who are, *inter alia*, “residing in” the United States pursuant to a lawful admission for permanent residence. Lawful permanent residents who are temporarily present in the United States are not “residing in” the United States.¹ Therefore, like the applicant, they must seek a certificate of citizenship pursuant to section 322 of the Act, 8 U.S.C. § 1433.

At issue in this case is whether a child admitted to the United States as a lawful permanent resident can satisfy the requirement of section 322(a)(5) of the Act, that is whether he is “temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.” The regulations, at 8 C.F.R. § 322.1 provide that the term “[l]awful admission shall have the same meaning as provided in section 101(a)(13) of the Act.” Section 101(a)(13) of the Act, 8 U.S.C. § 1101(a)(13), define “admission” as the “lawful entry of the alien into the United States after inspection and authorization by an immigration officer.” A lawful admission as defined in section 101 of the Act includes admissions in both immigrant and non-immigrant status. Because the regulations tie the requirement of “lawful admission” to the definition in section 101 of the Act, the “temporary” requirement in section 322 of the Act refers to the length and nature of the child’s

¹ The AAO notes that the applicant would automatically acquire U.S. citizenship (pursuant to section 320 of the Act) should she begin “residing in” the United States in her father’s custody at any time prior to her 18th birthday.

presence in the United States, not her immigration status. Eligibility for citizenship under section 322 of the Act is not limited to non-immigrants.

Section 322 of the Act, therefore, provides for U.S. citizenship for children, like the applicant, who are residing abroad and temporarily present in the United States pursuant to a lawful admission (in any lawful status). The district director erred in finding that an admission as a lawful permanent resident was *per se* not “temporary” and therefore barred eligibility for citizenship under section 322(a)(5) of the Act. As noted, section 322(a)(5) of the Act requires temporary presence in the United States pursuant to a lawful admission in any lawful status, including permanent residence. The AAO therefore finds that the applicant was eligible for citizenship under section 322 of the Act, 8 U.S.C. § 1433, when she temporarily entered the United States for her interview at the New York City office of USCIS.

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 the present case met her burden when she appeared before the district director, while “temporarily present in the United States pursuant to a lawful admission.” The appeal will therefore be sustained.

ORDER: The appeal is sustained.