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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

U.S. Citizenship  
and Immigration  
Services

E6

FILE: [REDACTED] Office: DALLAS, TX

Date: JUL 29 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 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, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Dallas, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the director for action consistent with this decision.

The record reflects that the applicant was born in China on November 19, 2004. The applicant's father, [REDACTED], became a U.S. citizen when he naturalized on July 3, 2007. The applicant's parents were married on June 20, 2003. The applicant resides in China. The applicant seeks a Certificate of Citizenship pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The field office director determined that the applicant had failed to establish that she was residing, outside the United States, in the legal and physical custody of a U.S. citizen parent. The director therefore found her ineligible for citizenship and denied the application accordingly.

On appeal, the applicant's father explains that he works for an American company in China (Intel) and has been residing with the applicant and her mother since 2007. The applicant's father submits a letter verifying his employment, a copy of his U.S. passport and the applicant's school records.

Section 322 of the Act, 8 U.S.C. § 1433, was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA benefits all persons who have not yet reached their 18<sup>th</sup> 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.<sup>1</sup>

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--

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<sup>1</sup> The AAO notes that the applicant has not automatically acquired U.S. citizenship under section 320 of the Act, 8 U.S.C. § 1431, as amended by the CCA, because she has not been admitted to the United States as a lawful permanent resident.

(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).

In order to satisfy the requirements of section 322(a)(4) of the Act, the applicant must establish that she resides *outside of the United States in the legal and physical custody of his U.S. citizen parent*. The AAO notes that the applicant's father is employed in China, at least since October 2008. *See* Employment verification letter submitted on appeal. The AAO further notes the applicant's father's Chinese employment visa (noted on his U.S. passport) and the applicant's school records. As defined in the Act, "residence" refers to a "general place of abode." *See* section 101 of the Act, 8 U.S.C. § 1101. The record reflects that the applicant's father's general place of abode is in China. The AAO must therefore conclude that the applicant has established eligibility for citizenship under section 322(a)(2)(4) of the Act because she is residing outside the United States in the custody of her U.S. citizen parent.

The AAO notes, however, that in order to satisfy the requirements of section 322(a)(5) of the Act, the applicant must establish that she is "temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status." The applicant is not in the United States. 8

C.F.R. § 322.3(a) tasks U.S. Citizenship and Immigration Services (USCIS) with sending appointment notices and scheduling interview for citizenship applications under section 322 of the Act. The AAO must therefore remand the matter to the director for scheduling of an interview as provided in the regulations, and for issuance of a new decision, which, if adverse to the applicant, shall be certified to the AAO for review.

ORDER: The matter is remanded to the director for further action consistent with this decision, and for issuance of a new decision, which, if adverse to the applicant, shall be certified to the AAO for review.