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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

PUBLIC COPY

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FILE: [redacted] Office: BUFFALO, NY Date: OCT 09 2009

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.

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Buffalo, New York, and came before the Administrative Appeals Office (AAO) on appeal. The appeal was dismissed. The applicant subsequently filed a new Form N-600, Application for Certificate of Citizenship, which was again denied. This appeal followed. The appeal will be dismissed.

The record reflects that the applicant, , was born in China on July 8, 2000. The applicant's parents, as indicated in her birth certificate, are and The applicant's **parents were married on March 15, 2000. The applicant's mother is a citizen of China.** The applicant's father became a naturalized U.S. citizen on April 21, 2005. The applicant asserts that she is entitled to derive U.S. citizenship through her father.

In denying the applicant's prior Form N-600, Application for Certificate of Citizenship, the district 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 AAO dismissed the applicant's appeal finding that it was not accompanied by any additional argument or documentation. The AAO further found that the applicant did not establish eligibility for citizenship under section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433, because she was not residing outside the United States in a U.S. citizen parent's custody. The AAO further found that the applicant was not temporarily in the United States pursuant to a lawful admission as is statutorily required.

The field office director denied the applicant's current Form N-600 after analyzing the applicability of sections 301, 321, 320 and 322 of the Act, 8 U.S.C. §§ 1401, 1431, 1432, and 1433, and finding that the applicant was ineligible under any provision. The applicant's father, on appeal, states that he has been residing in China and seeks to return to the United States. *See* Form I-290B, Notice of Appeal to the AAO and accompanying documentation.

At the outset, the AAO notes that the applicant's instant Form N-600, the applicant's second, should have been rejected pursuant to 8 C.F.R. § 341.6, which states that "[a]fter an application for a Certificate of Citizenship has been denied and the appeal time has run, a second application submitted by the same individual shall be rejected and the applicant instructed to submit a motion for reopening or reconsideration . . . ." The AAO notes that the applicant has not provided any additional evidence or argument that would warrant reopening or reconsideration of the previous decision in this case. Nonetheless, the AAO will adjudicate the appeal of the director's decision on the instant Form N-600.

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 18th birthdays as of February 27, 2001. CCA § 104; *Matter of Rodriguez-Tejedor*, 23 I & N Dec. 153 (BIA 2001). Because the applicant was under the age of 18 on February 27, 2001, 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 the record does not establish that the applicant's father is residing in China. In this regard, the AAO notes that the applicant's father provided his own statement, but no

documentation to support his claim that he has been residing in China. The documentation in the record is at best unclear with respect to the applicant's father's residency. The AAO thus concludes that the applicant cannot establish eligibility for citizenship under section 322(a)(2)(4) of the Act because she is not residing outside the United States in the physical and legal custody of her U.S. citizen parent.

The applicant has also failed to establish that she satisfies the requirements set forth in section 322(a)(5) of the Act, which state that the child is temporarily present in the U.S. pursuant to a lawful admission, and is maintaining such lawful status. An HQISD 70/33, INS Memorandum by William R. Yates, Deputy Executive Associate Commissioner, INS, entitled *Implementation Instructions for Title I of the Child Citizenship Act of 2000* (February 26, 2001) provides that:

> Under section 322 of the Act a foreign-born child who resides outside the United States must be lawfully admitted to the United States and maintain such lawful status until the application for certificate of citizenship is approved and the oath of allegiance administered . . . . A child may be admitted in any nonimmigrant classification. A child is considered to have maintained lawful status if his or her nonimmigrant classification has not been revoked or has not expired by operation of law.

The regulation at 8 C.F.R. § 322.4 provides further that, "the U.S. parent and the child shall appear in person before the Service officer for examination on the application for certificate of citizenship." In the present matter, there is no evidence in the record to indicate that the applicant was lawfully admitted into the United States at any time, or that she has ever maintained a temporary lawful status in the United States or appeared before an officer for certificate of citizenship examination purposes. The applicant thus failed to meet the requirements set forth in 8 C.F.R. § 322.4 and section 322(a)(5) of the Act.

The AAO notes, as did the field office director, that the applicant also cannot establish eligibility for U.S. citizenship under section 320 of the Act, 8 U.S.C. § 1431. However, if the applicant is admitted to the United States as a lawful permanent resident to reside in the legal and physical custody of her father, before turning 18, she may become eligible for citizenship under section 320 of the Act, 8 U.S.C. § 1431.

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. The applicant has failed to meet her burden in the present matter. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.