

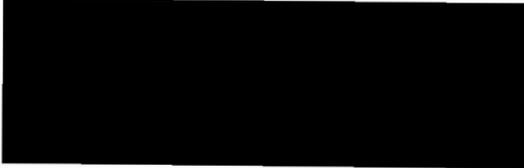
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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prevent clearly unwarranted
invasion of personal privacy



EG

FILE: [REDACTED] Office: LOS ANGELES, CA

Date: SEP 01 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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Los Angeles, California. The matter is 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 the Philippines on September 27, 1994. The applicant was adopted in 1997 by [REDACTED]. The applicant's adopted mother became a U.S. citizen upon her naturalization on March 31, 1994. On October 27, 2005, the applicant was admitted to the United States as a lawful permanent resident on the basis of an approved petition filed by her adopted mother. 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 adopted mother.

The field office director denied the applicant's citizenship claim finding that she had failed to establish that she was temporarily present in the United States pursuant to section 322(a)(5) of the Act, 8 U.S.C. § 1433(a)(5). The director further found that the applicant had not acquired U.S. citizenship under section 320 of the Act, 8 U.S.C. § 1431, as amended, because she was residing abroad.

On appeal, the applicant maintains that she is permanently residing in the United States, in the custody of her mother, since May 9, 2008. *See* Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO.

Sections 320 and 322 of the Act, 8 U.S.C. §§ 1431 and 1433, were amended by the Child Citizenship Act of 2000 (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. The applicant's 18th birthday will be on September 27, 2012.

Section 320 of the Act, 8 U.S.C. § 1431, states in pertinent part that:

- (a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:
 - (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
 - (2) The child is under the age of eighteen years.
 - (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.
- (b) Subsection (a) 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).

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, among other requirements, “residing in” the United States pursuant to a lawful admission for permanent residence. The applicant claims, on appeal, that she is residing permanently in the United States in her mother’s custody.¹ The matter must therefore be remanded to the director to provide the applicant with an opportunity to submit evidence that she is residing in the United States, in her mother’s custody.

Alternatively, the AAO notes that if the applicant is not residing in the United States, but is only here temporarily, she satisfies the requirement of section 322(a)(5) of the Act that she be “temporarily present in the United States pursuant to a lawful admission, and [] 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 presence in the United States, not his immigration status. Eligibility for citizenship under section 322 of the Act is not limited to non-immigrants. Thus, if the applicant cannot establish that she acquired U.S. citizenship under section 320 of the Act, her application under section 322 must be re-adjudicated.

The matter is remanded to the field office director to determine whether the applicant is residing in the United States in her mother’s custody such that she acquired U.S. citizenship automatically under section 320 of the Act, 8 U.S.C. § 1431. Alternatively, if the applicant is only temporarily in the United States, her Form N-600K, application for certificate of citizenship under section 322, shall be re-adjudicated. The director shall issue a new decision which, if adverse to the applicant, shall be certified to the AAO.

ORDER: The matter is remanded to the director for action consistent with this decision.

¹ The applicant indicates that she is attending high school, but no school records were submitted with the appeal. On remand, the applicant should submit school records, utility bills, medical documents, and any other evidence to establish that she is residing in the United States, in her mother’s custody, as claimed.