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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

E6

[redacted]

FILE: [redacted] Office: NEW YORK Date: SEP 0 3 2009

IN RE: Applicant:
Beneficiary: [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:

[redacted]

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 District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the beneficiary was born in Greece on January 16, 2002. The applicant is her father, who was born a U.S. citizen in Greece on March 16, 1964. The beneficiary's mother, was born in Greece and is not a U.S. citizen. The beneficiary's parents married in Greece on May 27, 2000. The beneficiary presently resides in Greece with her parents. 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.

In a decision dated November 9, 2007, the district director noted that the applicant had failed to submit evidence requested to show that the beneficiary's paternal 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. The district director concluded that the evidence submitted failed to establish the physical presence of the beneficiary's grandfather as required by section 322 of the Act and denied the application accordingly.

On appeal, counsel asserts that it was an error for the district director to conclude that only certain types of documents could establish the presence of the beneficiary's grandfather in the United States, as neither the Act nor relevant regulations limit the type of proof that can be considered. Counsel further asserts that much of the documentation requested by the district director would not have been and/or is not available given the claimed dates of physical presence. Counsel also contends that the district director erred in requiring an updated letter from Bellevue Hospital (but also submits just such a letter on appeal) to indicate the dates of the grandfather's internship there more than 50 years ago, as the notarized letter submitted was contemporaneous with the internship and is therefore of greater probative value than evidence created years later. Counsel summarizes the evidence of physical presence submitted by the applicant and asserts that it is sufficient to meet his burden of proof as it shows the following by a preponderance of the evidence: the beneficiary's grandfather was born in the United States on May 21, 1910 and resided in the United States until his family departed for Greece in 1920. After losing his U.S. citizenship upon joining the Greek Army in 1940, the grandfather returned to the United States on March 18, 1948 and became a naturalized U.S. citizen before returning to live in Greece in September 1950.

The evidence of physical presence includes, but is not limited to, copies of the grandfather's birth certificate showing that he was born on May 21, 1910 in the Bronx, New York; the grandfather's birth and baptismal certificate from the Greek Orthodox Archdiocese of North and South America showing that the grandfather was born in New York on May 21, 1910 and baptized there on September 12, 1910; the birth certificate of who is purported to be the grandfather's brother, showing that he was born in the Bronx on November 5, 1908; the birth certificate of who is purported to be the grandfather's brother, showing that he was born in the Bronx on February 5, 1913; a Report of Birth Abroad of a Citizen of the United States of America (Form FS-250) for the applicant submitted and accepted by the Vice Consul of the U.S. Embassy in Athens on September 26, 1968 in which the grandfather indicated that he was present in the United States from birth until 1920 and again from 1948 to 1950; an Application for a Certificate of Arrival and Preliminary Form for Petition for Naturalization signed by the grandfather

on or about October 28, 1948 in which he indicated that he had been present in the United States from March 1948 through the date of that application; a page from the grandfather's Greek passport showing that he was admitted to the United States on March 18, 1948; the grandfather's naturalization certificate dated December 19, 1949; an affidavit dated January 2, 1950 from the grandfather's uncle, , in which he attested to the grandfather's birth in 1910 and his presence in the United States until 1920; a notarized letter dated June 9, 1950 from of Bellevue Hospital in New York, in which he stated that the grandfather was a resident assistant doctor at the hospital from May 10, 1948 to May 1950; a letter dated November 15, 2007 from of the Office of Medical Staff Affairs at the Bellevue Hospital Center, in which states that the grandfather was employed at the hospital from May 10, 1948 to May 1950; and various letters documenting attempts by the grandfather to become licensed and obtain employment as a dentist in the United States in 1948 and 1949. The entire record has been reviewed in rendering a decision on the appeal.

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 or the United State and shall be furnished by the Attorney General with a certificate of citizenship.

The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

Concerning the question of the grandfather's presence in the United States, the AAO finds that the evidence submitted by the applicant is sufficient to demonstrate that the beneficiary's grandfather was physically present in the United States for approximately ten years prior to his fourteenth birthday, and for more than two years after attaining the age of fourteen, thus meeting the requirements of section 322(a)(2) of the Act. The evidence also shows that the applicant is a U.S. citizen as required by section 322(a)(1) of the Act. The applicant has also demonstrated that the beneficiary meets the section 322(a)(4) requirement that she reside outside of the U.S. in the physical custody of her U.S. citizen parent as the evidence shows that the beneficiary resides with the applicant in Athens, Greece. Should the applicant, prior to her eighteenth birthday, be temporarily present in the United States pursuant to a lawful admission, and maintaining such lawful status pursuant to section 322(a)(5) of the Act, and should she also take and subscribe to the oath of allegiance pursuant to section 322(b) of the Act, she shall become a citizen of the United States and be furnished with a certificate of citizenship.

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 met his burden. The appeal will therefore be sustained.

ORDER: The appeal is sustained.