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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: NEWARK, NEW JERSEY Date: MAY 0 3 2010

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 PETITIONER:

[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.

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, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Australia on January 31, 1992. *See Birth Certificate for* [redacted]. The applicant's father was born in Jerusalem on July 23, 1955, and he became a U.S. citizen by naturalization on June 9, 2004. *See Birth Certificate and Certificate of Naturalization for* [redacted] The applicant's mother was born in Israel on March 5, 1961. *See Birth Certificate for* [redacted] The applicant's parents were married to each other at the time of the applicant's birth. *See Marriage Certificate* (indicating marriage on September 2, 1984). 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 applicant filed an Application for Citizenship and Issuance of Certificate Under Section 322 (Form N-600K) on July 13, 2004. The director found that the applicant was not residing outside of the United States in the legal and physical custody of her U.S. citizen parent, and denied the application accordingly. The applicant filed a timely appeal and subsequently submitted additional documents in support of the appeal.

Section 322(a) of the Act, 8 U.S.C. § 1433(a), applies to children born and residing outside of the United States, and provides, in pertinent part, that:

> 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 [citizen parent] . . . .
>
> (5) The child is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.

The record reflects that the applicant reached her eighteenth birthday on January 31, 2010. Accordingly, the applicant is statutorily ineligible for a certificate of citizenship because she does not meet the age limitation set forth in section 322(a)(3) of the Act. Because the applicant is now 18 years old, we do not reach the issue of whether or not she is residing outside of the United States in the legal and physical custody of her U.S. citizen father.

A person may obtain citizenship only in strict compliance with the statutory requirements imposed by Congress, and the AAO lacks the authority to use equitable powers to issue a certificate of citizenship nunc pro tunc when an applicant fails to meet the relevant statutory provisions. *See INS v. Pangilinan*, 486 U.S. 875, 883-84 (1988). Moreover, "it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect," and that any doubts concerning citizenship are to be resolved in favor of the United States. *Berenyi v. District Director, INS*, 385 U.S. 630, 637 (1967).

The applicant bears the burden of proof in these proceedings to establish the claimed citizenship by a preponderance of the evidence. 8 C.F.R. § 341.2(c). Because the applicant has not met her burden of showing that she meets the requirements of section 322(a) of the Act, the appeal will be dismissed.

ORDER: The appeal is dismissed.