



Immigration and Naturalization Service

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425 I Street NW
Washington, DC 20536

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MEMORANDUM FOR REGIONAL DIRECTORS
DISTRICT DIRECTORS
OFFICERS-IN-CHARGE
SERVICE CENTER DIRECTORS

FROM: William R. Yates /S/ Janis Sposato
Deputy Executive Associate Commissioner
Office of Field Operations
Immigration Services Division

SUBJECT: Addition of Citizen Grandparents and Citizen Legal Guardians as Eligible
Applicants pursuant to INA 322

Public Law 107-273, 21st Century Department of Justice Appropriations Authorization Act, was signed into law on November 2, 2002. One of the immigration related changes made by this legislation is the addition of U.S. citizen grandparents and U.S. citizen legal guardians as eligible to apply for naturalization on behalf of a child born and residing outside the United States pursuant to INA 322. **This law is now in effect and should be followed for adjudications of any application pursuant to INA 322 filed on or after November 2, 2002. Districts must ensure that procedures are in place to accept immediate filing of applications for citizenship pursuant to these amendments.**

Under this amended provision, application by the U.S. citizen grandparent or U.S. citizen legal guardian can be made within 5 years of the death of a U.S. citizen parent of a child who could otherwise have been the beneficiary of an application pursuant to INA 322.

IMPORTANT: This policy memo has been partially or fully superseded by the USCIS Policy Manual. Please visit www.uscis.gov/policymanual for current policy.

Subject: Addition of Citizen Grandparents and Citizen Legal Guardians as eligible Applicants Pursuant to INA 322

The law does not authorize applications pursuant to INA 322 by any person other than a U.S. citizen parent except in cases in which a U.S. citizen parent has died.

Any U.S. citizen grandparent or duly appointed U.S. citizen legal guardian can file an N-600 (or N-600K) on behalf of an eligible child whose U.S. citizen parent has died during the preceding five years. In such cases, the enabling physical presence requirement can be met only by either::

- A) The citizen parent by the time of the parent's death, or
- B) A citizen parent of the citizen parent by the time of the citizen parent's death.

If the physical presence of the citizen parent of a dead citizen is used to fulfill the physical presence requirement of INA 322, the citizen parent of the dead citizen parent must have still been alive at the time of the citizen parent's death. Once this requirement has been met, any U.S. citizen grandparent or duly appointed U.S. citizen legal guardian can file an N-600 (or N-600K) on behalf of an eligible child whose U.S. citizen parent has died during the preceding five years.

Although the cutoff date for applications pursuant to 322 filed by a citizen grandparent or by a citizen legal guardian is five years after the death of the citizen parent, the joint interview of the applicant and the child beneficiary can be conducted at any Immigration Office in the United States that conducts these interviews at any time while the child is still under the age of eighteen years.

These are the only changes that this statute makes regarding Certificates of Citizenship. The child remains eligible only if the child resides outside the USA. However, the U.S. citizen grandparent or the U.S. legal guardian can reside in the USA or outside the USA.

If you have any questions about this memorandum, please contact Lyle Boelens, Business Process Reengineering, Immigration Services Division at (202) 514-8273.

Attachment

After the changes made by Public Law 107-273, INA 322 now reads:

Sec. 322. Children born and residing outside the United States; conditions for acquiring certificate of citizenship.

SEC. 322. (a) A parent who is a citizen of the United States or, if the citizen parent has died during the preceding 5 years, a citizen grandparent or citizen legal guardian 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 or, at the time of his or her death, was is a citizen of the United States, whether by birth or naturalization.

(2) The United States citizen parent--

(A) has or, at the time of his or her death, had 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 or, at the time of his or her death, had 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 (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).