



U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[REDACTED]

AUG 22 2000

Public Copy

FILE: [REDACTED] Office: Chicago

Date:

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under § 341(a) of the
Immigration and Nationality Act, 8 U.S.C. 1452(a)

IN BEHALF OF APPLICANT:

[REDACTED]

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

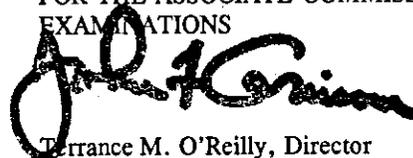
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS



Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Chicago, Illinois, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant was born on September 23, 1980 in Italy. The applicant's father, [REDACTED] was born in Italy in 1946 and never claimed to be a U.S. citizen. The applicant's mother, [REDACTED] was born in the United States in May 1952. The applicant's parents married each other on September 14, 1974 in Italy. The applicant is seeking a certificate of citizenship under § 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1433.

The district director reviewed the record and concluded that, although the applicant had filed the application prior to her 18th birthday, she had reached the age of 18 years before fulfilling all the requirements. The district director then denied the application accordingly.

On appeal, counsel argues that the applicant filed the application more than three years before her 18th birthday but the Service failed to adjudicate the case prior to her 18th birthday. Counsel states that the applicant made numerous and extraordinary inquiries and attempts to bring the case to the Service's attention and these attempts were ignored. Counsel states that there is no statutory authority which prohibits the district director from reopening and adjudicating the case nunc pro tunc.

Section 322. CHILD BORN OUTSIDE THE UNITED STATES; APPLICATION FOR CERTIFICATE OF CITIZENSHIP REQUIREMENTS

(a) **APPLICATION OF CITIZEN PARENTS: REQUIREMENTS.**-A parent who is a citizen of the United States may apply to the Attorney General for a certificate of citizenship on behalf of a child born outside the United States. The Attorney General shall issue such a certificate of citizenship 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 child is physically present in the United States pursuant to a lawful admission.
- (3) The child is under the age of 18 years and in the legal custody of the citizen parent.
- (4) If the citizen parent is an adoptive parent of the child, the child was adopted by the citizen parent before the child reached the age of 16 years and the child meets the requirements for being a child under subparagraph (E) or (F) of § 101(b)(1).
- (5) If the citizen parent has not been physically present in the United States or its outlying

possessions for a period or periods totaling not less than 5 years, at least 2 of which were after attaining the age of 14 years-

(A) The child is residing permanently in the United States with the citizen parent, pursuant to a lawful admission for permanent residence, or

(B) A citizen parent of the citizen parent has been physically present in the United States or its outlying possessions for a period or periods totaling not less than 5 years, at least 2 of which were after attaining the age of 14 years.

(b) ATTAINMENT OF CITIZENSHIP STATUS; RECEIPT OF CERTIFICATE.-Upon approval of the application (which may be filed abroad) and, except as provided in the last sentence of § 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.

It was formerly the case that, for a child born before November 14, 1986, the citizen grandparents had to have been physically present in the United States for at least 10 years, at least 5 of which were after the grandparent's 14th birthday. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, division C, § 671(b)(2), 110 Stat. 3009-546, 3009-721 (1996). Congress repealed that requirement in 1997. Act of August 8, 1997, 111 Stat. 1115 (1997). Pursuant to IIRIRA, the U.S. citizen (grand)parent must demonstrate that he or she has been physically present in the United States or its outlying territory for 5 years, at least two of which were after attaining the age of 14.

The record reflects that the applicant's grandfather became a naturalized U.S. citizen in December 1940. The applicant's grandmother was born in the United States. The record reflects that both grandparents satisfied the physical presence requirements.

8 C.F.R. 322.2(a) provides that to be eligible for naturalization under § 322 of the Act, a child on whose behalf an application for naturalization has been filed by a parent who is, at the time of filing, a citizen of the United States, must:

- (1) Be unmarried and under 18 years of age, both at the time of application and at the time of admission to citizenship;
- (2) Be physically present in the United States pursuant to a lawful admission, and in the legal custody of the applying citizen parent;

(3) Comply with other requirements for naturalization as provided in the Act....

8 C.F.R. 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant failed to satisfy all the regulations prior to her 18th birthday. There are no provisions for nunc pro tunc approvals of a § 322 application.

This decision is without prejudice to the applicant's seeking U.S. citizenship through normal naturalization procedures by filing an Application for Naturalization on Form N-400 with a Service office having jurisdiction over her residence.

ORDER: The appeal is dismissed.