



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



PUBLIC COPY

FILE: [Redacted] Office: Philadelphia

Date:

FEB 24 2000

IN RE: Applicant: [Redacted]

APPLICATION: Application for Certificate of Citizenship on Behalf of an Adopted Child under § 341 of the Immigration and Nationality Act, 8 U.S.C. 1452

IN BEHALF OF APPLICANT: Self-represented

Identifying data inserted 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 Acting District Director, Philadelphia, Pennsylvania, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant was born in Jamaica on May 18, 1980 and was lawfully admitted to the United States as a nonimmigrant visitor on July 15, 1992. He was adopted by [REDACTED] on May 10, 1996 and she became a naturalized U.S. citizen on March 20, 1997. The applicant seeks a certificate of citizenship under § 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1433.

The acting district director reviewed the provisions of § 322 of the Act and concluded that the applicant is no longer eligible to receive a certificate of citizenship because he is more than 18 years old. The acting district director then denied the application accordingly.

On appeal, the applicant's mother states that she submitted her son's application in sufficient time to have it completed in a timely manner before he reached the age of 18 and it is because of Service negligence in addressing the application that it was denied.

As a general rule, all of the laws relating to derivative citizenship require a combination of elements having a simultaneous existence before a son or daughter arrives at a specified age. The sequence in which these elements come into being is immaterial. Determinations involving derivative citizenship are governed by the law in effect when the last material element is completed. See INTERP 320.1(a)(1).

Section 322 of the Act provides, in part, that:

(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.

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) Reside permanently in the United States, in the physical and legal custody of the applying citizen parent, pursuant to a lawful admission;
- (3) Be a person of good moral character, attached to the principles of the Constitution of the United States, and favorably disposed toward the good order and happiness of the United States; a child under the age of 14 will generally be presumed to satisfy this requirement;
- (4) Comply with other requirements for naturalization as provided in the Act.... (Emphasis supplied.)

An alien may acquire citizenship only upon strict compliance with the requirements that Congress has established by statute. INS v. Pangilinan, 486 U.S. 876, 884 (1988). Congress has provided that a citizen parent may apply for a child's naturalization under § 322 of the Act. Moreover, the child must be in the legal custody of the citizen parent and under the age of 18 years at the time of filing the application and admission to citizenship. The applicant, for this reason cannot comply with either of these statutory prerequisites.

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 has failed to provide that evidence. Therefore, the appeal will be dismissed.

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 his residence.

**ORDER:** The appeal is dismissed.