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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

FILE [redacted] Office: MIAMI, FLORIDA Date: MAY 28 2003

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship pursuant to section 322 of the Immigration and Nationality Act, 8 U.S.C. § 1433

ON BEHALF OF APPLICANT: Self-Represented

INSTRUCTIONS:

This is the decision 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 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 that 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 that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born on August 22, 1989, in Caracas, Venezuela. The applicant's father, [redacted] was born in Venezuela and has no claim to United States (U.S.) citizenship. The applicant's mother, [redacted] was born in Venezuela in 1965, and acquired U.S. citizenship at birth through her father. The applicant's parents were married in December 1984. The applicant's mother filed a Form N-600, Application for Certificate of Citizenship (N-600 application) for the applicant on February 12, 2002. On May 8, 2002, the acting district director in Miami, Florida, concluded that the applicant was statutorily ineligible for citizenship under section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433. The application was denied accordingly.

Section 322 of the Act, in effect on February 27, 2001, applies to children born and residing outside of the United States. The section provides, in pertinent part that:

> (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 is (or, at the time of his or her death, was) 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 . . . .

The evidence in the record indicates that the applicant's U.S. citizen grandfather, [redacted] (Mr. [redacted] died on August 10, 1981. The acting district director concluded that the applicant's U.S. citizen mother did not meet the physical residence requirements set forth in section 322(a)(2)(A) of the Act. The decision concluded further that, because Mr. [redacted] was deceased when the applicant's N-600 application was adjudicated, the applicant also did not meet the section 322(a)(2)(B) statutory requirements for acquiring citizenship through her grandfather.

On appeal, the applicant asserts that, as a matter of law, the acting district director erred in not granting her application. In support of her assertion, the applicant submitted a copy of the instructions contained in the N-600 application stating, "the grandparent may be living or deceased at the time of application." *See* Form N-600/643 Supplement A (Rev. 05/04/00).

A recent Bureau of Citizenship and Immigration Services ("BCIS", formerly known as the Immigration and Naturalization Service ("INS")) memorandum acknowledges the ambiguous wording contained in section 322(a)(2)(B) of the Act, and the possibility of an interpretation requiring that

the U.S. citizen grandparent be alive at the time of adjudication of a certificate of citizenship application. In order to clarify BCIS policy on the issue, the memorandum states:

> Assuming an alien child meets all other requirements of Section 322, an alien child remains eligible after the death of the citizen parent's own citizen parent, so long as the citizen parent's own citizen parent met the physical presence requirement in Section 322(a)(2)(B) at the time of death.

See HQ 70/34.2-P Memorandum by [redacted] Acting Associate Director, BCIS, entitled "Effect of Grandparent's Death on Naturalization under INA Section 322" (April 17, 2003).

Based on the evidence in the record, Mr. [redacted] meets the physical residence requirements set forth in section 322(a)(2)(B) of the Act. Moreover, the fact that Mr. [redacted] was deceased when the applicant's N-600 application was adjudicated is irrelevant pursuant to the BCIS memorandum cited above.

In spite of the above factors, however, the applicant is nevertheless, statutorily ineligible for a certificate of citizenship.

> Under section 322 of the Act a foreign-born child who resides outside the United States must be lawfully admitted to the United States and maintain such lawful status until the application for certificate of citizenship is approved and the oath of allegiance administered . . . . A child may be admitted in any nonimmigrant classification. A child is considered to have maintained lawful status if his or her nonimmigrant classification has not been revoked or has not expired by operation of law.

See HQISD 70/33 INS Memorandum by [redacted] Deputy Executive Associate Commissioner, INS, entitled "Implementation Instructions for Title I of the Child Citizenship Act of 2000" (February 26, 2001); *see also* section 322(a)(5) of the Act;

In this case, there is no evidence in the record to indicate that the applicant has been lawfully admitted into the U.S. for any period of time or that she maintained a temporary lawful status in the United States when her N-600 application was adjudicated. The applicant thus does not meet the requirement set forth in section 322(a)(2)(5) of 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. In this case, the burden has not been met.

ORDER: The appeal is dismissed.