U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted]

MAR 17 2001

FILE: [redacted] Office: Houston 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: Self-represented

Public Copy

Identification 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

Robert P. Wiemann, Acting Director
Administrative Appeals Office

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

The applicant was born on December 25, 1981, in the British West Indies. The applicant's father, was born in the West Indies in 1959 and became a naturalized U.S. citizen on February 18, 1994. The applicant's mother, was born in the British West Indies in 1957 and became a naturalized U.S. citizen on May 6, 1999. The applicant's parents married each other on July 11, 1981 and were divorced on January 15, 1988. The applicant seeks 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 the applicant had was ineligible because she had already attained the age of 18 years prior to her admission to citizenship.

On appeal, the applicant's mother states that her daughter has a job, pays taxes but cannot get financial help to attend the University of Houston because of her status. The applicant's mother states that the applicant has never been in trouble and has been a productive member of society.

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 that 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.

Pursuant to 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), the U.S. citizen parent or citizen grandparent 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 mother has satisfied the physical presence requirement.

8 C.F.R. 322.2(a) provides that to be eligible for "expeditious 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 to citizenship;
>
> (3) Comply with other requirements for naturalization as provided in the Act....

The record reflects that the applicant was in the custody of her mother, who filed the application, following the parent's divorce. The applicant was 17 years and 6 months old when the application was filed with the Service office. A notation on the application reflects that the applicant has not been lawfully admitted for permanent residence. This finding is supported by the provision of law by which her employment authorization was issued on February 25, 1999 under 8 C.F.R. 274a.12(c)(09). That section of the regulations provides for employment authorization in increments of one year to aliens who have applied for adjustment of status.

Service index records fail to show that the applicant has ever been accorded status as a lawful permanent resident.

8 C.F.R. 322.5(a) provides that a child, as defined in § 322.2(b) of the Act, must take the oath of allegiance in compliance with 8 C.F.R. 337, if the child is capable of understanding the meaning of the oath. The record fails to show that the applicant took the oath of allegiance prior to her 18th birthday, if eligible.

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, and 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 her residence.

ORDER: The appeal is dismissed.