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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

FILE: [REDACTED] Office: St. Paul

Date: FEB 05 2003

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Naturalization under Section 322 of the
Immigration and Nationality Act, 8 U.S.C. § 1433

IN BEHALF OF APPLICANT: [REDACTED]

PUBLIC COPY

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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Director
Administrative Appeals Office

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

The applicant was born on December 20, 1990, in Eritrea. The applicant's father, [REDACTED], was born in May 1969 in Eritrea, became a U.S. citizen through his father, and was issued a U.S. passport on March 7, 1995. The applicant's mother, [REDACTED], was born in January 1970 in Eritrea and never had a claim to United States citizenship. The applicant's parents never married each other. The applicant was admitted to the United States in July 1999 under the Visa Waiver Pilot Program. The applicant is seeking to become a naturalized citizen under section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The district director noted that the physical presence requirement must be established by the applicant's alleged grandfather, [REDACTED]. The district director requested a copy of [REDACTED] birth certificate to establish that [REDACTED] was his father and the applicant's grandfather. The applicant failed to submit that document. The record only contains a notarized statement from [REDACTED] indicating that he is the father of [REDACTED].

The district director reviewed the record and concluded that the applicant had failed to establish that she was eligible for a certificate of citizenship based on her claimed relationship to [REDACTED]. The district director denied the application pursuant to 8 C.F.R. § 103.2(b)(12) and (14).

On appeal, counsel states that the district director's decision is incorrect and against the weight of the evidence. Counsel states that the applicant submitted ample evidence to establish that [REDACTED] is the father of [REDACTED]. Counsel indicates that [REDACTED] affidavit and the parties' identical last names constitute sufficient evidence.

8 C.F.R. § 103.2(b)(2) provides, in part, that if a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition or application who have direct knowledge of the event and circumstances. Such secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

The record fails to contain any primary or secondary evidence which establishes that [REDACTED] is the father of [REDACTED] pursuant to the requirements of 8 C.F.R. § 103.2(b)(2).

Section 322 of the Act was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA benefits all persons who have not yet reached their 18th birthday as of February 27, 2001. The applicant was 10 years old on February 27, 2001. Therefore, the applicant is eligible for benefits under the CCA.

Section 322 of the Act in effect on February 27, 2001, provides that:

(a) A parent who is a citizen of the United States 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 such a certificate of citizenship to such parent 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 United States citizen parent-

(A) 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; or

(B) has 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 custody and physical custody of the citizen parent, 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).

Stepchildren and children born out of wedlock who have not been legitimated are not included in the definition of the term "child" as used in Title III. Legitimation of a child is accomplished by the marriage of the natural parents unless otherwise provided by the law of the child's or father's residence or domicile.

Counsel has failed to provide evidence that the applicant has a citizen parent or grandparent who meets the residency requirements, that she is residing outside the United States in the legal and physical custody of the citizen parent, that she is temporarily in the United States pursuant to a lawful admission, or that she has been legitimated.

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 establish her eligibility for the benefit sought, and the appeal will be dismissed.

ORDER: The appeal is dismissed.