E2

Department of Homeland Security
Bureau of Citizenship and Immigration Services

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

[redacted]

FILE: [redacted] Office: Vermont Service Center Date: JUL 03 2003

IN RE: Applicant: [redacted]

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

ON 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 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 my be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) 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 Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born on June 8, 1987, in Korea to a father, [redacted] and a mother, [redacted] The applicant was admitted to the United States on December 26, 1997, as a nonimmigrant visitor. She was adopted on April 6, 1998, by [redacted] who became a naturalized U.S. citizen on November 7, 1986, and [redacted] who became a naturalized U.S. citizen on July 9, 1982. The applicant's adoptive parents married each other on August 8, 1981. The applicant seeks a certificate of citizenship under the provisions of section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The director reviewed the provisions of sections 320 and 321 of the Act, 8 U.S.C. § 1431 and 8 U.S.C. § 1432, regarding the acquisition of a certificate of citizenship for an adopted child who was born outside of the United States. The director concluded that the applicant had not satisfied the regulations relating to this section of the Act and denied the application accordingly.

On appeal, counsel states that the Bureau cited the wrong regulation, section 341 of the Act instead of Section 322 of the Act. Counsel asserts that the application was filed under section 322 of the Act. Therefore, the denial should be revoked.

Section 341(a) of the Act, 8 U.S.C. § 1452(a), provides that a person who claims to have derived United States citizenship through the naturalization of a parent . . . may apply to the Attorney General for a certificate of citizenship. Eligibility for this certificate hinges on the applicant's eligibility under other sections of the Act. In this case, the director correctly reviewed sections 320 and 321 of the Act to determine whether the applicant satisfied the requirements of those statutes. The AAO will also review section 322 of the Act.

Sections 320 and 322 of the Act were amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. Section 321 was repealed. The CCA benefits all persons who have not yet reached their 18th birthday as of February 27, 2001. The applicant was 13 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.

(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 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).

8 C.F.R. § 322.2(a) provides that to be eligible for citizenship under section 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 have fulfilled the following conditions:

(1) The child has at least one United States citizen parent (by birth or naturalization);

(2) The United States citizen parent has been physically present in the United States or its outlying possessions for the required period of time;

(3) The child is currently under 18 years of age;

(4) The child currently is residing outside the United States in the legal and physical custody of the United States citizen parent; and

(5) The child is temporarily present in the United States pursuant to a lawful admission and is maintaining such lawful status in the United States.

The applicant has failed to establish that she has satisfied the requirement of 8 U.S.C. § 322(a)(4) pursuant to the CCA amendments. The applicant is not currently residing outside the United States in the legal and physical custody of the United States parent.

The application was filed in April 2000, prior to the CCA amendments. Therefore, former section 322 of the Act was in effect.

Section 322 of the Act in effect prior to the CCA amendments provided, in part, that:

(a) 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 section 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) Upon approval of the application (which may be filed 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 applicant satisfied the requirements of former section 322(a) prior to its amendment, but failed to satisfy the requirements of former section 322(b) because the application was not approved prior to its amendment.

Bureau instructions regarding the handling of pending N-643 applications filed under old section 322 for adopted children who were not lawfully admitted for permanent residence require them to be processed under new section 322.

Pursuant to 8 C.F.R. § 341.2(c), 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 pursuant to section 316 of the Act, 8 U.S.C. § 1427, by filing an Application for Naturalization on Form N-400 with a Bureau office having jurisdiction over her residence.

ORDER: The appeal is dismissed.