

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

FIG



FILE:

Office: NEW YORK, NY

Date:

JUN 03 2008

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship under Section 322 of the Immigration and Nationality Act, 8 U.S.C. § 1433.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The record reflects that the applicant, [REDACTED] was born in Bermuda on December 4, 1990. The applicant's mother, [REDACTED] was born in Bermuda but derived U. S. citizenship from her mother. The applicant's maternal grandmother, [REDACTED] was born in New York on May 23, 1932. The applicant presently seeks a certificate of citizenship pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433, claiming to derive U.S. citizenship through his maternal grandmother.

The district director denied the applicant's citizenship claim upon finding that he had failed to timely provide the requested evidence of his grandmother's physical presence in the United States. The application was accordingly denied.

On appeal, the applicant, through his mother, maintains that he did timely provide the requested evidence. See Form I-290B, Notice of Appeal.¹ The appeal is accompanied by additional documentation relating to the applicant's grandmother's physical presence in the United States.

Section 322 of the Act, 8 U.S.C. § 1433, applies to children born and residing outside of the United States, and 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 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 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

¹ The AAO notes that the Form I-290B, Notice of Appeal, purports to relate to both the applicant and his sister, [REDACTED]. The AAO notes further that the director's decision in the applicant's sister's case is nearly identical to the decision presently on appeal. At this time, however, only the applicant's record is on appeal before the AAO. The AAO's findings in this matter are equally applicable to the applicant's sister's citizenship claim.

(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 applicant [citizen parent] (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.

(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).

The record contains, in relevant part, the applicant's birth certificate, the applicant's mother's birth certificate and Consular Report of Birth Abroad, the applicant's maternal grandmother's birth certificate and copy of her U.S. passports. The record also includes a copy of the applicant's maternal grandmother's medical and high school records, letters from family members and friends, and documents pertaining to the applicant's maternal grandmother's social insurance payments and UK pension. Additionally, the record includes a copy of the deed to the house the applicant's grandparents purchased in New Jersey in 1981. The record also contains the Certificates of Citizenship issued to the applicant's cousins, who claim to have derived citizenship from the applicant's maternal grandmother.

The AAO finds that, based on the evidence in the record, the applicant has met his burden to prove that his maternal grandmother was physically present in the United States for five years, two of which while over the age of 14.² Specifically, the applicant's mother's Consular Report of Birth Abroad indicates that the applicant's grandmother had resided in the United States from 1932 until April 1954. Further, the high school records provided corroborate the applicant's claim that his grandmother was present in the United States from February 1947 until June 1950. The medical records provide evidence of the applicant's grandmother's physical presence in the United States from 1981 to 2003.

² The AAO notes that section 322 of the Act does not require that the grandparent's physical presence in the United States be prior to the applicant's birth.

The regulation at 8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant has met her burden in the present matter. The appeal will therefore be sustained.³

ORDER: The appeal is sustained.

³ The AAO notes that the applicant will reach the age of 18 years on December 4, 2008. In order for him to obtain citizenship under section 322 of the Act, his application must be adjudicated and approved, and the oath of allegiance administered, before December 4, 2008.