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

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW YORK, NY Date: JUN 05 2008

IN RE: Applicant: [redacted]

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.

Elena C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Form N-600K, Application for Citizenship and Issuance of Certificate Under Section 322 (N-600K application) was denied by the District Director, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the N-600K application will be denied.

The applicant was born on February 3, 1988, in Croatia. He turned eighteen on February 3, 2006. The applicant's N-600K application indicates that this father is a U.S. citizen. However, the record contains no evidence or documentation to establish the applicant's father's U.S. citizenship. The record contains a U.S. passport for the applicant's mother. The applicant's N-600K application indicates that the applicant's mother was born in Croatia, and that she acquired U.S. citizenship at birth through a U.S. citizen parent. The applicant's parents were married on October 17, 1987, in Croatia. The applicant was admitted into the United States as a lawful permanent resident on July 24, 1989, when he was one years old. The applicant's mother filed the N-600K application on the applicant's behalf on February 10, 2005, and 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, based on the claim that he derived U.S. citizenship through his mother.

In a decision dated June 20, 2006, the district director determined that the applicant was ineligible for U.S. citizenship under section 322 of the Act because he had failed to take, and subscribe to, an oath of allegiance to the United States prior to his eighteenth birthday. The N-600K application was denied accordingly.

On appeal the applicant asserts, through his mother, that he was under the age of eighteen and eligible for a certificate of citizenship when he filed his N-600K application. The applicant asserts that he obtained a U.S. passport in the United States in January 2006, prior to his eighteenth birthday, and he indicates that he should not be penalized for U.S. Citizenship and Immigration Services (CIS) delays in adjudicating his N-600K application.

The AAO finds that the applicant's burden to establish his eligibility for U.S. citizenship under the Act is not affected or changed by CIS delays. The requirements for U.S. citizenship are statutorily mandated, and a person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan,* 486 U.S. 875, 885 (1988). In order to obtain a certificate of citizenship, the applicant must therefore establish that he fully meets the requirements for citizenship as set forth in the Act.

Sections 320 and 322 of the former Immigration and Nationality Act (former Act) were amended by the Child Citizenship Act of 2000 (CCA), which took effect on February 27, 2001. The provisions of the CCA are not retroactive, and the amended provisions of sections 320 and 322 of the Act apply only to persons who were not eighteen years old as of February 27, 2001. In the present matter, the applicant was thirteen years old when the amended provisions took effect. The applicant is therefore eligible for consideration under sections 320 and 322 of the Act. *Matter of Rodriguez-Tejedor,* 23 I&N Dec. 153 (BIA 2001.)

Section 322 of the Act provides, in pertinent part 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 [now Secretary, Homeland Security, "Secretary"]

shall issue a certificate of citizenship to such applicant upon proof, to the satisfaction of the Attorney General [Secretary], 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 and physical custody of the citizen parent.

(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 . . . 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 [Secretary] with a certificate of citizenship.

Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33), defines the term, "residence" as a person's, "[p]lace of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent."

In the present matter the applicant established that his mother is a U.S. citizen, as set forth in section 322(a)(1) of the Act. The N-600K application, as well as address information and written statements made by the applicant's mother reflect that the applicant lives in Croatia with his married parents. The applicant thus established by a preponderance of the evidence that, prior to his eighteenth birthday, he resided outside of the U.S. in the legal and physical custody of his U.S. citizen mother, as set forth in section 322(a)(4) of the Act. U.S. Social Security Administration evidence contained in the record additionally establishes that the applicant's mother worked in the United States for twelve years, between 1989-2001. The applicant thus established by a preponderance of the evidence that his mother was physically present in the U.S. for five years, at least two of which were after she turned fourteen, in April 1983, as set forth in section 322(a)(2)(A) of the Act. However, the record lacks evidence to establish that the applicant was temporarily present in the United States, as set forth in section 322(a)(5) of the Act. Moreover, the record reflects that the applicant

turned eighteen on February 3, 2006, prior to CIS adjudication or approval of his Form N-600K application. The applicant therefore failed to meet the requirements set forth in section 322(b) of the Act. Accordingly, the applicant does not qualify for derivative citizenship under section 322 of the Act.

It is noted that section 320 of the Act permits a child born outside of the U.S. to automatically become a citizen of the United States upon fulfillment of the following conditions:

> (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
>
> (2) The child is under the age of eighteen years.
>
> (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

In the present matter, the evidence in the record fails to indicate or establish that the applicant resided in the United States in the physical custody of his U.S. citizen mother subsequent to the February 27, 2001, enactment of section 320 of the Act, and prior to his eighteenth birthday. The applicant therefore failed to establish that he derived U.S. citizenship through his mother under section 320 of the Act.

The AAO notes that the CCA repealed section 321 of the former Act. All persons who obtained citizenship automatically under section 321 of the former Act, as previously in force prior to February 27, 2001, may, however, apply for a certificate of citizenship at any time. *Matter of Rodriguez-Tejedor, supra.*

Section 321 of the former Act provided, in pertinent part, that:

> (a) [A] child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:
>
> (1) The naturalization of both parents; or
>
> (2) The naturalization of the surviving parent if one of the parents is deceased; or
>
> (3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if the child was born out of wedlock and the paternity of the child has not been established by legitimation; and if-
>
> (4) Such naturalization takes place while said child is under the age of 18 years; and
>
> (5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized

> under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

The record contains no evidence to establish that the applicant's father became a naturalized U.S. citizen prior to the applicant's eighteenth birthday. Moreover, the applicant failed to establish that his mother became a U.S. citizen through naturalization. Accordingly, the applicant did not qualify for derivative citizenship under section 321 of the former Act, prior to his eighteenth birthday.

Section 301(g) of the Act states in pertinent part that the following shall be nationals and citizens of the United States at birth:

> (g) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was 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 . . . .

Although the record contains yearly U.S. Social Security Administration earnings evidence establishing, by a preponderance of the evidence, that the applicant's mother was physically present in the U.S. after the applicant's birth, the record contains no evidence to indicate or establish that the applicant's mother was physically present in the United States for five years prior to the applicant's birth, at least two years of which occurred after she turned fourteen. The applicant therefore failed to establish that he acquired U.S. citizenship through his mother under section 301(g) of the Act.

The AAO notes the fact that the applicant was issued a U.S. passport prior to his eighteenth birthday, on January 10, 2006. In accordance with *Matter of Villanueva*, 19 I&N Dec. 101 (BIA 1984), a valid U.S. passport constitutes conclusive proof of a person's U.S. citizenship and may not be collaterally attacked. Nevertheless, as previously discussed, CIS has no authority to issue a certificate of citizenship in the absence of evidence of eligibility

The burden of proof is on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. 8 C.F.R. § 341.2(c). In the present matter, the applicant has failed to meet his burden of proof. The appeal will therefore be dismissed and the N-600 application will be denied.

ORDER: The appeal is dismissed. The application is denied.