U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

HQ 70/34.2-P

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April 17, 2003

MEMORANDUM FOR REGIONAL DIRECTORS
DISTRICT DIRECTORS
OFFICERS-IN-CHARGE
SERVICE CENTER DIRECTORS

FROM: William R. Yates */s/ Janis Sposato*
Acting Associate Director
Bureau of Citizenship and Immigration Services

SUBJECT: Effect of Grandparent's Death on Naturalization under INA Section 322

This memorandum establishes the interpretation of Section 322(a)(2)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1433(a)(2)(B), that all officers of the Bureau of Citizenship and Immigration Services are to follow in adjudicating applications for citizenship under Section 322. This interpretation is to be followed in all cases that are pending on the date of this memorandum, as well as in cases filed on or after that date. For cases adjudicated before the date of this memorandum, directors should consider this memorandum to be a sufficient basis to grant an otherwise untimely motion to reopen or reconsider a previous decision.

INA Section 322 provides for the expedited naturalization of the alien child of a citizen, if the alien child is "residing outside of the United States" and meets the relevant requirements of Section 322. One requirement is that the citizen parent must have "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." INA § 322(a)(2)(A), 8 U.S.C. § 1433(a)(2)(B). If the citizen parent cannot meet this requirement, the alien child may still qualify if the citizen parent's *own* citizen parent can meet the physical presence requirement. *Id.* § 322(a)(2)(B), 8 U.S.C. § 1433(a)(2)(B).

The question has arisen whether the citizen parent's citizen parent must be alive in order for the alien child to qualify for naturalization under Section 322.[1] It is our understanding that some offices have held that the citizen parent's own citizen parent must be alive. The Administrative Appeals Office has reached the same result, albeit in a case not designated as a

[1] A recent amendment to § 322 makes clear that the alien child may qualify after the citizen parent's own death, if a citizen grandparent or citizen guardian applies for the alien child's naturalization not more than five years after the death of the citizen parent, and the person with custody does not object. 21st Century DOJ Appropriations Authorization Act, Pub. L. 107-273, Division C, § 11030B, 116 Stat. 1758, 1837 (2002).

binding precedent. In contrast, at least one office has held that an alien child remains eligible after the death of the citizen parent's own citizen parent, so long as the citizen parent's own citizen parent met the physical presence requirement in Section 322(a)(2)(B) at the time of death.

Both interpretations of Section 322(a)(2)(B) are reasonable interpretations. The statute itself is ambiguous, and so does not make either interpretation inherently more reasonable. Nor does the available legislative history assist in resolving this issue.

Although both interpretations are reasonable, it is not reasonable for different officers to interpret Section 322(a)(2)(B) differently. Effective immediately, all officers of the Bureau of Citizenship and Immigration Services are to interpret Section 322(a)(2)(B) as follows:

> Assuming an alien child meets all other requirements of Section 322, an alien child remains eligible after the death of the citizen parent's own citizen parent, so long as the citizen parent's own citizen parent met the physical presence requirement in Section 322(a)(2)(B) at the time of death.

cc: Official file