



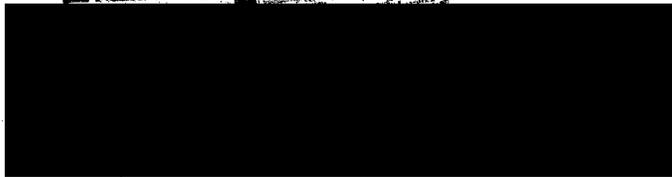
FILE

U.S. Department of Justice

Immigration and Naturalization Service

Identifying data deleted to prevent clearly unwarranted invasion of personal

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE: [Redacted]

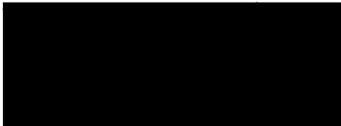
Office: Houston

Date: 15 AUG 2002

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:



Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 which 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, Houston, Texas, and a subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is before the Associate Commissioner on a motion to reopen. The motion will be dismissed, and the order dismissing the appeal will be affirmed.

The applicant was born [REDACTED] on December 25, 1960, in Mexico to [REDACTED]. On July 20, 1961, the applicant was lawfully admitted to the United States. On April 15, 1968, [REDACTED] a United States citizen, and [REDACTED] adopted the applicant in the United States and changed his name to [REDACTED]. The applicant married [REDACTED] on August 5, 1980, and remained married to her until her death in February 1989.

The applicant filed the present application on April 28, 1997, at the age of 36 years. He seeks a certificate of citizenship under section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1433.

The district director reviewed the provisions of section 322 of the Act, regarding the acquisition of a certificate of citizenship for an adopted child who was born outside of the United States. The district director concluded that the applicant had not satisfied the regulations relating to this section of the Act and denied the application accordingly. The Associate Commissioner affirmed that decision on appeal.

On motion, counsel states that the applicant has met all the requirements of section 322 of the Act, as he was adopted when he was 8 years old and was in the legal custody of the adopting parent.

As a general rule, all of the laws relating to derivative citizenship require a combination of elements having a simultaneous existence before a son or daughter arrives at a specified age. The sequence in which these elements come into being is immaterial. Determinations involving derivative citizenship are governed by the law in effect when the last material element is completed. See INTERP 320.1(a)(1).

Sections 320 and 322 of the Act were 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 birthdays as of February 27, 2001. The applicant was 40 years old on February 27, 2001.

The record contains documentation which reflects that, following the Associate Commissioner's decision of March 17, 2001, the present matter was before the Board of Immigration Appeals on April 26, 2001. The proceedings was held in abeyance to await publication of the CCA. After reviewing the regulations published on June 13, 2001, it was determined that the applicant had not obtained U.S. citizenship under the CCA.

Section 322 of the Act in effect prior to February 27, 2001, 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 than 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.

In 1994, section 322 of the Act was amended to provide for expedited naturalization of certain children born outside the United States. See Immigration and Technical Corrections Act of 1994 (INTCA), section 102, Pub.L. 103-416, 108 Stat. 4307. Unlike children who acquire citizenship through a citizen parent as of a date of their birth, children who are expeditiously naturalized under section 322 of the Act based on their parent's/grandparent's residence, become citizens upon approval of the application and subscribing to the oath of allegiance (if applicable).

8 C.F.R. 322.2(a) provides that to be eligible for "expeditious naturalization" 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: (1) Be unmarried and under 18 years of age, both at the time of application and at the time of admission to citizenship.

The record is devoid of evidence to show that the applicant satisfied all the requirements of the statute prior to his 18th birthday.

On motion, counsel states that the applicant also met the requirements of section 301(g) of the Act, 8 U.S.C. 1401(g), and acquired U.S. citizenship at birth by operation of law and not by adjudication.

Montana v. Kennedy, 278 F.2d 68, affd. 366 U.S. 308 (1961), held that to determine whether a person acquired U.S. citizenship at birth abroad, resort must be had to the statute in effect at the time of birth. Section 301(g) of the Act was in effect at the time of the applicant's birth.

Section 301(g) of the Act in effect prior to November 14, 1986, provides, in pertinent part, that 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 10 years, at least 5 of which were after attaining the age 14 years, shall be nationals and citizens of the United States at birth.

Neither of the applicant's natural parents, Jose Humberto Rodriguez nor Rafaela Tejedor, was a United States citizen at the time of the applicant's birth. Therefore, the applicant did not acquire U.S. citizenship at birth under section 301(g) of the Act.

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 not met that burden. The order dismissing the appeal will be affirmed.



ORDER: The order of March 17, 2001, dismissing the appeal is affirmed.