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U.S. Citizenship
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[REDACTED]

FILE: [REDACTED] Office: HARLINGEN, TEXAS Date: **SEP 21 2005**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under § 322 of the Immigration and Nationality Act; 8 U.S.C. § 1433.

ON BEHALF OF APPLICANT:

[REDACTED]

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, Director
Administrative Appeals Office

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

The record reflects that the applicant was born in Mexico on April 27, 1995. The applicant's mother was born in Mexico. She derived U.S. citizenship from her father. The applicant's father is not a U.S. citizen. The applicant's parents are married. The applicant's maternal grandfather was born in the United States and was a U.S. citizen. The applicant seeks a certificate of citizenship pursuant to § 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The district director concluded the applicant had failed to establish that he resided outside of the United States in the legal and physical custody of her U.S. citizen mother, as required by § 322 of the Act. The district director also noted that the applicant had entered the United States without lawful admission. The application was denied accordingly.

On appeal, the applicant, through his mother, states that he resides in Reynosa, Tamaulipas, Mexico. Neither the applicant nor counsel submits any documentation in support of this claim, however.

Section 322 of the Act applies to children born and residing outside of the United States and states, 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 applicant.
- (5) The child is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.

The evidence in the record reflects that the applicant's parents reside in the United States. The applicant had previously provided the same address of residence in Pharr, Texas as that of his parents. Although the applicant asserts on appeal that he lives in Mexico, he fails to provide a specific address or any proof or residence. Even if it were shown that the applicant lives in Mexico, there is no evidence that he resides with

his U.S. citizen mother. The evidence does not establish the § 322(a)(4) requirement that the applicant reside outside of the U.S. in the physical custody of his U.S. citizen parent.

The applicant also does not qualify for citizenship under § 320 of the Act, 8 U.S.C. § 1431. Section 320 of the Act states in pertinent part that:

- (a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:
 - (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.

The applicant has failed to establish that he has been admitted to the U.S. pursuant to a lawful admission for permanent residence (as an immigrant visa holder), as required under the third paragraph above. The AAO therefore concludes that the applicant does not qualify for a certificate of citizenship under either § 322 or §320 of the Act.

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 not met his burden, and the appeal will be dismissed.¹

ORDER: The appeal is dismissed.

¹ As noted in the interim district director's decision, the present AAO decision is also made without prejudice to the U.S. citizen parent filing an Immigrant Visa petition on behalf of the applicant, or to the applicant's filing a new application for a Certificate of Citizenship if he becomes eligible.