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U.S. Department of Justice  
Immigration and Naturalization Service

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



FILE: [Redacted]

Office: Miami

Date:

AUG 16 2002

IN RE: Applicant:



APPLICATION: Application for Certificate of Citizenship under Section 321 of the  
Immigration and Nationality Act, 8 U.S.C. 1432

IN BEHALF OF APPLICANT: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision 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.

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 that 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 that 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 Acting District Director, Miami, Florida, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The record reflects that the applicant was born on November 15, 1985, in Germany. The applicant's father, [REDACTED] was born in Colombia in December 1956 and became a naturalized U.S. citizen on April 17, 1986. The applicant's mother, [REDACTED] was born in November 1946 in Spain and never became a United States citizen. The applicant's parents married each other on December 6, 1985. The applicant's parents were divorced on April 18, 2000. The applicant was lawfully admitted for permanent residence on October 15, 1986. The applicant claims eligibility for a certificate of citizenship under section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1432.

The acting district director reviewed the divorce decree in the record and noted that the Court placed the applicant's primary residence with her mother. The acting district director determined that the applicant did not become a U.S. citizen because she was in the legal custody of her mother, who did not naturalize. The acting district director denied the application accordingly.

On appeal, the applicant disagrees with that decision. The applicant also requests oral argument. 8 C.F.R. 103.3(b) provides that the affected party must explain in writing why oral argument is necessary. The Service has the sole authority to grant or deny a request for oral argument and will grant such argument only in cases which involve unique factors or issues of law which cannot be adequately addressed in writing. In this case, no cause for oral argument is shown. Consequently, the request is denied.

Section 321 of the Act was repealed on February 27, 2001. An applicant who was over the age of 18 on that date is ineligible to obtain the new benefits of the Child Citizenship Act (CCA) of 2000, Pub.L. 106-395, which allows for the naturalization of "at least one parent" to suffice while the child is under the age of 18. The applicant was 16 years old on February 27, 2001, and eligible for the benefits of the CCA.

Section 320(a) of the Act, effective on February 27, 2001, provides, in part, that a child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have 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.

(b) Subsection (a) shall apply to a child adopted by United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

In Matter of Fuentes, 21 I&N Dec. 893 (BIA 1997), the Board stated the following: "Through subsequent discussions, [the interested agencies] have agreed on what we believe to be a more judicious interpretation of section 321(a). We now hold that, as long as all the conditions specified in section 321(a) are satisfied before the minor's 18th birthday, the order in which they occur is irrelevant."

In Matter of Fuentes, the applicant was born in 1960, was lawfully admitted for permanent residence in 1968, the parents divorced in 1972, the mother was granted legal custody and the mother naturalized in 1976 when the applicant was 16 years old. When the matter was decided by the Board of Immigration Appeals (the Board), the applicant was 36 years old. The Board concluded that the applicant was residing in the United States in lawful status at the time his mother was naturalized. Former section 321 of the Act provided, in part, at (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 last parent....

The present record establishes that (1) the applicant's father became a naturalized U.S. citizen when the applicant was five months old, (2) the applicant's parents were married and living together when the applicant's father naturalized, (3) the applicant became the beneficiary of an approved visa petition filed by her father, and (4) the applicant was residing in the United States in her father's legal custody as a lawful permanent resident when her father naturalized.

Following Fuentes, all the requirements of section 320 of the Act were satisfied before the applicant reached the age of 18 years. The applicant was residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence when her father naturalized in 1986. The fact that her parents divorced 15 years later is not material in this matter.

Therefore, the appeal will be sustained, and the acting district director's decision will be withdrawn.

**ORDER:** The appeal is sustained. The acting district director's decision is withdrawn, and the application is approved.