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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: Houston

Date: AUG 19 2002

IN RE: Applicant: [Redacted]

APPLICATION: Application for Certificate of Citizenship under Section 341(a) of the Immigration and Nationality Act, 8 U.S.C. 1452(a)

IN BEHALF OF APPLICANT: [Redacted]

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 on January 15, 1982, in Argentina. She alleges to be the daughter of [REDACTED] a native of Argentina who became a naturalized U.S. citizen in April 1998, and [REDACTED] a native of Spain who became a naturalized U.S. citizen in April 1998. [REDACTED] and [REDACTED] married each other in March 1969. The applicant was admitted on September 12, 1996. The applicant is seeking a certificate of citizenship under sections 320 or 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1431 or 1432.

The district director reviewed the application under the requirements for section 321 of the Act and concluded that the applicant had failed to establish that a bona fide parent/child relationship ever existed, and she was not residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized. The Associate Commissioner affirmed that decision on appeal.

On appeal, counsel disagrees with the finding of the American Consulate and the Service office that the applicant's mother refused or failed to undergo a medical examination to establish that she is the applicant's natural mother when documentation establishes otherwise. Counsel states that the Argentinean Government would not have issued a birth certificate and even a passport to the applicant if Maria del Matti was not the mother.

Section 321 of the Act was repealed on February 27, 2001. Former section 321(a) of the Act provided 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.

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."

The record establishes that the applicant's alleged parents, [REDACTED] became naturalized U.S. citizens prior to the applicant's 18th birthday.

However, the approved visa petition filed by [REDACTED] in behalf of the applicant, was returned to the approving Service office for reconsideration based upon a lack of evidence of a parent/child relationship with [REDACTED]. That lack of evidence has been thoroughly addressed in prior decisions. The record is silent as to whether the visa petition has ever been revoked. It is noted that [REDACTED] has not provided the requested evidence to the American Consul or to the Service that she is the applicant's natural mother. 8 C.F.R. 103.2(b)(13) provides that if all requested initial evidence is not submitted by the required date, the application or petition shall be considered abandoned, and accordingly denied.

[REDACTED] was scheduled to appear on two occasions at a Service office in the past but failed to appear. In a third request for evidence, an affidavit was submitted indicating the provider of the documentation was deceased. [REDACTED] has failed to provide the evidence requested and has not shown that it is not available by other means.

Further, former section 321 of the Act required the applicant to be residing in the United States as a lawful permanent resident when the parents naturalized. According to the district director, the applicant has not provided evidence that she was lawfully admitted for permanent residence, and counsel has failed to provide that evidence on appeal or on motion.

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 19 years and 1 month old on February 27, 2001. Therefore, she is not eligible for the benefits of the CCA.

On motion, counsel states that the applicant is eligible for the benefit sought under section 320 of the Act. Counsel states that the applicant was under the age of 18 when she submitted the application and is eligible for relief.

Former section 320 of the Act prior to its amendment provided that:

(a) A child born outside of the United States, one of whose parents at the time of the child's birth was an alien and the other of whose parents then was and never thereafter ceased to be a citizen of the United States, shall, if such parent is naturalized, become a citizen of the United States, when

(1) such naturalization takes place while such child is under the age of 18 years; and

(2) such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of naturalization or thereafter and begins to reside permanently in the United States while under the age of 18 years.

The applicant does not qualify for consideration under former section 320 of the Act because neither of her alleged parents was a U.S. citizen at the time of her birth.

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. Therefore, the motion will be dismissed, and the decision dismissing the appeal will be affirmed.

ORDER: The motion is dismissed. The order of September 17, 2001, dismissing the appeal is affirmed.