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U.S. Department of Justice  
Immigration and Naturalization Service

Public Copy

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

[Redacted]

FILE [Redacted]

Office: Dallas

Date: AUG 26 2002

IN RE: Applicant: [Redacted]

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

IN BEHALF OF APPLICANT: [Redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 District Director, Dallas, Texas, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be rejected. The district director's decision will be withdrawn and the matter will be remanded.

The record reflects that the applicant was born on December, 24, 1970, in Mexico. Particulars about the applicant's father, [REDACTED] a citizen of Mexico, are unknown. The applicant's mother, [REDACTED] was born in February 1942 in Mexico and became a naturalized United States citizen on November 21, 1985. The applicant's parents allegedly never married each other. The applicant was lawfully admitted for permanent residence in September 1987. The applicant seeks a certificate of citizenship under section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1432.

The district director noted that the applicant's birth certificate reflects that his natural parents, [REDACTED] were married and this document was used in determining whether or not the applicant was eligible to receive an immigrant visa. The district director determined the record failed to establish that the applicant met the requirements of former section 321 of the Act and denied the application accordingly.

On appeal, counsel states that an error was made by the Civil Registry and the mother's affidavit could have been corroborated by the Service at an interview but no interview was scheduled. Counsel provided a review of the applicant's birth certificate [REDACTED] lawyer and notary public, University of Guanajuato, Mexico. He determined that the birth certificate only proves that [REDACTED] is the applicant's father and that no marriage ever existed. The Associate Commissioner also agrees that a person's birth certificate is not proof of marriage.

The record also contains the mother's Form 13, Mexican National Identification Card with an incomplete translation reflecting that she is single. The copy of the document in the record has the date March 8, 196X, at the bottom of the page with the final digit of the year missing. That date is completely missing from the translation provided. A subsequent translation of the Form 13 has been submitted with the date listed as March 11, 1989. The Associate Commissioner cannot find that date on the face of the Form 13 copy in the record.

The record also contains a copy of an x-ray card which contains a nearly illegible date at the top which could either be March 1969, (corresponding to the date of the Form 13), or March 11, 1989, as stated in the translation of that document. X-rays were required of Mexican citizens at one time for border crossing purposes. The U.S. Public Health Service discontinued the x-ray program in the early 1970's. Therefore, absent the original x-ray card and evidence to the contrary, the Associate Commissioner deems that the date on the document is March 1969. Therefore, the Form 13 and x-ray card

predate the applicant's birth and the mother's designation on the Form 13 as being single is quite feasible as she states that she and [REDACTED] had four children and the applicant was the last born.

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, [REDACTED] which allows for the naturalization of "at least one parent" to suffice while the child is under the age of 18. The CCA provides benefits only to those persons who had not yet reached their 18th birthday as of February 27, 2001. The applicant was 30 years old on February 27, 2001.

Former section 321(a) of the Act provided that 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 applicant's mother states that she and the applicant acquired their permanent resident status through her husband, [REDACTED]

This statement would indicate that [REDACTED] filed the visa petition for the applicant rather than the applicant's mother as indicated by the district director. Those complete Service files, [REDACTED] are not present for the Associate Commissioner to review.

The record establishes that (1) the applicant's mother became a naturalized U.S. citizen prior to the applicant's 18th birthday, (2) the applicant became the beneficiary of an approved visa petition filed by either his mother or his step-father, and (4) he was residing in the United States in his mother's legal custody as a lawful permanent resident after his mother naturalized.

The issue presented here, the prior marital status of the applicant's mother, has been before the Service and the American Consulate in other proceedings (visa petition and visa application proceedings). Since the Associate Commissioner has not been provided with the applicant's and his mother's complete Service files for review in this matter, the district director's decision will be withdrawn.

The matter will be remanded to her to review those Service files regarding prior determinations about the mother being single or having been married to [REDACTED] and to render a new decision based on all the evidence in the cumulative records. If the decision is adverse to the applicant, the record is to be certified to the Associate Commissioner for review supported by the complete Service files of both parties.

**ORDER:** The district director's decision is withdrawn. The matter is remanded for further action in accordance with the above discussion and the entry of a new decision which, if adverse to the applicant, is to be certified to the Associate Commissioner for review.