



EA

U.S. Department of Justice

Immigration and Naturalization Service

Deleting data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



FILE: [Redacted]

Office: Houston

Date: AUG 26 2002

IN RE: Applicant: [Redacted]

APPLICATION:

Application for Certificate of Citizenship under Section 320 of the
Immigration and Nationality Act, 8 U.S.C. 1431

IN BEHALF OF APPLICANT: Self-represented

Public Copy

INSTRUCTIONS:

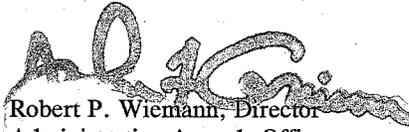
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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, Houston, Texas, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant was born on February 13, 1993, in Mexico. The applicant's father [REDACTED] was born in El Salvador in July 1956. The applicant's mother, [REDACTED] was born in Mexico in March 1959 and became a naturalized U.S. citizen on April 11, 1996. The applicant's natural parents never married each other. The applicant was present in the United States without a lawful admission or parole in March 1993. The applicant is seeking a certificate of citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1431.

The district director reviewed the record and concluded that the applicant failed to meet the definition of "child" as that term is defined in section 101(c)(1) of the Act, 8 U.S.C. 1101(c)(1). The district director determined that the applicant was ineligible for the benefit sought and denied the application accordingly.

On appeal, the applicant's mother states that she and the applicant's father never married each other but they have been living in a common law marriage for more than 13 years. She further states that the applicant was recognized by herself and the applicant's father on May 13, 1993.

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.

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 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.

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

Section 101(c)(1) of the Act provides that the term "child" means an unmarried person under 21 years of age and includes a child legitimated under the law of the child's residence or domicile, or

under the law of the father's residence or domicile, whether in the United States or elsewhere, and except as otherwise provided in section 320 of title III, a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of 16 years except to the extent that the child is described in subparagraph (E)(ii) or (F)(ii) of subsection (b)(1), and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

Service guidelines clearly support the statutory language used in section 101(c) of the Act to define the term "child," and state that stepchildren and children born out of wedlock who have not been legitimated are not included in the definition of "child" as used in Title III 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 failed to establish that he meets the definition of the term "child" as it is defined in section 101(c)(1) of the Act or that he has been legitimated prior to his 16th birthday. Therefore, the appeal will be dismissed.

This decision is without prejudice to the applicant's seeking U.S. citizenship through normal naturalization procedures by filing an Application for Naturalization on Form N-400 with a Service office having jurisdiction over the applicant's place of residence.

ORDER: The appeal is dismissed.