



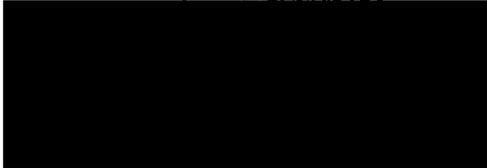
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U.S. Department of Justice

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:



Office: Seattle

Date:

MAY 09 2002

IN RE: Applicant:



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:



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

The applicant was born in Mexico on June 18, 1964. The applicant's father, [REDACTED] was born in Mexico and never had a claim to U.S. citizenship. The applicant's mother [REDACTED] was born in the United States in 1929. The applicant's parents never married each other. The applicant seeks a certificate of citizenship under section 309 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1409.

The district director determined the applicant had failed to establish that her mother had fulfilled the physical presence requirements prior to the applicant's birth and denied the application accordingly.

On appeal, counsel states that he is filing the appeal for the express purpose of tolling the two-year eligibility period for the applicant to self-petition as a widow of a United States citizen under section 201(b)(2)(A)(i) of the Act, 8 U.S.C. 1151(b)(2)(A)(i). Counsel states that the Service advised the applicant to continue with her application under section 322 of the Act, 8 U.S.C. 1433, even though she does not qualify. Counsel states that the applicant qualifies to obtain lawful permanent residence as the widow of a United States citizen as she married a U.S. citizen on March 19, 1995, and he died on September 28, 1998.

Issues under section 201(b) are not within the jurisdiction of the Associate Commissioner and will not be addressed in this proceedings.

Montana v. Kennedy, 278 F.2d 68, affd. 366 U.S. 308 (1961), held that to determine whether a person acquired citizenship at birth abroad, resort must be had to the statute in effect at the time of birth.

Section 309(a) of the Act was amended by Pub. L. 99-653 and was effective as of the date of enactment, November 14, 1986. The old section 309(a) shall apply to any individual who has attained 18 years of age as of the date of the enactment of this Act. The applicant was 22 years old on November 14, 1986.

The text of "old section 309(a) of the Act" is as follows:

A person born after December 23, 1952, outside the United States and out of wedlock shall be held to have acquired the nationality status of his mother, if the mother had the nationality of the United States at the time of such person's birth, and if the mother had previously been physically present in the United States or one of its outlying possessions for a continuous period of one year.

The record contains a Form N-600 filed in May 1982, prior to the amendments to section 309 of the Act, which apparently remained unadjudicated in the record until recently. Action on that Form N-600 application was administratively closed on April 26, 1996 for failure to prosecute. Although the applicant filed a Form N-565 in September 1992, alleging that her certificate of citizenship issued in 1975 by a Service office in Arizona, had been lost, stolen or destroyed, the Service has no record whatsoever of ever having issued the applicant a certificate of citizenship. The district director proceeded to deny that 1982 Form N-600.

On appeal counsel states that the amended section 320 of the Act, 8 U.S.C. 1431, must be applied.

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 36 years and 8 months old on February 27, 2001, and she was not residing in the United States pursuant to a lawful admission for permanent residence. The applicant is ineligible for benefits under the CCA.

8 C.F.R. 341.2 provides that the burden of proof shall be upon the claimant, or his parent or guardian if one is acting in his behalf, to establish the claimed citizenship by a preponderance of the evidence. The applicant in this matter has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.