



EQ

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

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

FILE [REDACTED] Office: Denver

Date: FEB 28 2003

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: [REDACTED]

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Denver, Colorado, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant was born on February 2, 1989, in Mexico. The applicant's father is unknown. The applicant's mother was born in Mexico in September 1953 and became a naturalized U.S. citizen on April 12, 2002. The applicant's parents never married each other. The applicant was lawfully admitted for permanent residence on May 22, 1996. 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 children born out of wedlock who have not been legitimated are not included in the definition of the term "child" as used in Title III. Therefore, the applicant is ineligible for the benefit sought.

On appeal, counsel states that section 320 of the Act as amended by P.L. 95-417, and repealed by P.L. 106-395, states that a child under age 18 and unmarried, born subsequent to December 24, 1952, but before February 27, 2001, who is the child born out of wedlock to a naturalized U.S. citizen mother, is entitled to automatic acquisition of citizenship through the naturalization of his unwed mother.

Counsel cites section 101(b)(1)(D) of the Act, 8 U.S.C. 1101(b)(1)(D), which applies to the term "child" as used in titles I and II. Section 320 of the Act is in title III. Section 101(c) of the Act, 8 U.S.C. § 1101(c), contains the definition of "child" as that term is used in title III.

The term "child" as used in title III means, in pertinent part, an unmarried person under twenty-one 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....

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 12 years old on February 27, 2001.

Stepchildren and children born out of wedlock who have not been legitimated are not included in the definition of the term "child" as used in Title III. Therefore, unless such children are adopted or legitimated, they will not be eligible for benefits under the CCA.

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.

(b) Subsection (a) of this section shall apply to an adopted child only if the child is residing in the United States at the time of naturalization of such adoptive parent, in the custody of his adoptive parents, pursuant to a lawful admission for permanent residence.

The applicant does not qualify for consideration under former section 320 of the Act because one of his parents was not a U.S. citizen at the time of his birth.

Pursuant to 8 C.F.R. § 341.2(c), 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 meet that burden. Therefore, the appeal will be dismissed.

ORDER: The appeal is dismissed.