



U.S. Citizenship
and Immigration
Services

152

[Redacted]

FILE: [Redacted]

Office: DALLAS, TX

Date:

SEP 15 2004

IN RE: Applicant:

[Redacted]

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

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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DISCUSSION: The application was denied by the District Director, Dallas, Texas, and the applicant appealed the decision to the Administrative Appeals Office (AAO). The district director's decision was subsequently withdrawn and the matter remanded to the district director. The matter has now been certified to the AAO for review. The district director's decision will be affirmed and the applicant's appeal will be dismissed.

The record reflects that the applicant was born on December 24, 1970, in Mexico. The applicant's father, [REDACTED] was born in Mexico and has no claim to U.S. citizenship. The applicant's mother, [REDACTED] was born in Mexico, and she became a naturalized U.S. citizen on November 21, 1985, when the applicant was fourteen years old. The applicant was admitted into the U.S. as a lawful permanent resident in September 1987. The applicant seeks a certificate of citizenship pursuant to section 321 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432.

The applicant's Form N-600, Application for Certificate of Citizenship (N-600 application) was initially denied by the district director, Dallas, Texas on March 26, 2001, based on a finding that only the applicant's mother was a naturalized U.S. citizen, and that the applicant was not born out of wedlock, as required under section 321 of the former Act. The applicant, through counsel, appealed the district director's decision on April 30, 2001, stating that the district director had relied on erroneous marital status information contained on the applicant's Mexican birth certificate. On August 26, 2002, the AAO found that the parental marital status information contained on the applicant's birth certificate did not, in and of itself, establish that the applicant's parents were married at the time of his birth. The AAO noted further that Mexican identification card and x-ray documentation contained in the record stated that the applicant's mother was single. However, the dates on the documents were illegible. Accordingly, the AAO remanded the matter back to the district director for further action, to determine whether the applicant's parents were married at the time of his birth.

On present certification the district director provides the results of an Immigration and Customs Enforcement (ICE) investigation conducted in Mexico regarding the marital status of the applicant's parents at the time of the applicant's birth. The ICE investigation results include a Mexican marriage certificate reflecting that the applicant's parents, [REDACTED] and [REDACTED] were married in Tijuana, Mexico on December 10, 1970, prior to the applicant's birth. The investigation results additionally include the Mexican birth certificates of the applicant's siblings (Felicita born October 22, 1968, the applicant born December 24, 1970, Francisco born January 12, 1971, Jean born January 22, 1973, [REDACTED] 3, 1974, and [REDACTED] born June 29, 1976). All of the birth certificates state that the applicant's parents were married.

Former section 321 of the Act provided, in pertinent part, that:

(a) 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.

The applicant has failed to establish that both of his parents became naturalized U.S. citizens prior to his eighteenth birthday. He also failed to establish that his father died prior to his eighteenth birthday. Moreover, the AAO finds that the marriage and birth certificate documentation obtained through the ICE investigation establish that the applicant's parents were married prior to the applicant's birth on December 24, 1970. No documentation or evidence was submitted to overcome the findings of the ICE investigation. The applicant has therefore failed to establish that he was born out of wedlock as required by section 321(a)(3) of the former Act, and he does not qualify for citizenship under section 321 of the former 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. In this case, the burden has not been met. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.