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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

APR 11 2005

[Redacted]

FILE: [Redacted] Office: SAN DIEGO, CA Date:

IN RE: Applicant: [Redacted]

APPLICATION: Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act; 8 U.S.C. § 1431.

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

DISCUSSION: The application was denied by the District Director, San Diego, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Mexico on October 27, 1978. The applicant was adopted by [REDACTED] on November 3, 1995, when he was seventeen years old. [REDACTED] was born in Mexico on April 4, 1960. She became a naturalized U.S. citizen on January 31, 1992. The record reflects that the applicant used a border-crossing card to enter the United States on an unknown date. He seeks a certificate of citizenship pursuant to section 320 of the Act, 8 U.S.C. § 1431, based on the claim that he acquired U.S. citizenship through his adoptive mother.

The district director determined the applicant had failed to establish that he met the definition of "child" as set forth in the Immigration and Nationality Act. The application was denied accordingly.

On appeal, counsel asserts that a Superior Court in San Diego ordered that the applicant be issued a delayed U.S. birth certificate at the time of his adoption on November 3, 1995. Counsel asserts that the applicant's delayed issued birth certificate constitutes proof that the applicant acquired U.S. citizenship at birth, and that U.S. Citizenship and Immigration Services (CIS) should therefore be estopped from denying the applicant's certificate of citizenship application under section 320 of the Act.

The AAO notes that counsel provides no legal authority to support the assertions made on appeal. Moreover, the AAO finds that the requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and that U.S. Citizenship and Immigration Services (CIS) lacks statutory authority to issue a certificate of citizenship when an applicant fails to meet relevant statutory provisions set forth in the Act. See *Iddir v. INS*, 301 F.3d 492 (7th Cir. 2002). The AAO therefore finds that in order to obtain a certificate of citizenship, the applicant must establish that he fully meets section 320 of the Act requirements.

Section 320 of the Act states, in pertinent part:

(a) 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(b)(1) of the Act, 8 U.S.C. § 1101(b)(1) states in pertinent part that:

(1) The term "child" means an unmarried person under twenty-one years of age who is-

...

(E) (i) a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two

years: Provided, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act

The record reflects that the applicant was seventeen years old when [REDACTED] adopted him. The applicant therefore failed to meet the statutory requirement set forth in section 101(b)(1) of the Act, that he be adopted while under the age of sixteen. Accordingly, the applicant is not a "child" for section 320 of the Act purposes.¹

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant has not met his burden. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.

¹ The AAO additionally notes that the applicant failed to establish that while under the age of eighteen, he was admitted into the United States pursuant to a lawful admission for permanent residence.