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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted] Office: HARLINGEN, TEXAS Date: **AUG 10 2005**

IN RE: Applicant: [Redacted]

APPLICATION: Application for Certificate of Citizenship.

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

Robert P. Wiemann, Director
Administrative Appeals Office

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

The record reflects that the applicant was born on May 5, 1950, in Mexico. The applicant was adopted in Mexico by [REDACTED] on August 19, 1965, at the age of fifteen. The applicant's adoptive mother [REDACTED] was born in Wichita Falls, Texas, and she was a U.S. citizen. The record reflects that [REDACTED] as a widow when she adopted the applicant. The applicant presently seeks a certificate of citizenship pursuant to sections 320, 321, 322 and 301(a)(7) of the former Immigration and Nationality Act (the former Act), 8 U.S.C. §§ 1431, 1432, 1433, and 1401(a)(7).

The district director concluded that the applicant did not qualify for a certificate of citizenship under the former Act because she had failed to establish she was in the legal custody of her U.S. parent when her Application for Certificate of Citizenship was filed. The application was denied accordingly.

On appeal, counsel asserts that the applicant qualifies for a certificate of citizenship because she was legally adopted by her U.S. citizen mother and because she resided in Mexico in the legal custody of her adoptive mother from 1963 until 1970.

Section 322 of the former Act stated, in pertinent part:

(a) Application of citizen parents; requirements

A parent who is a citizen of the United States may apply to the Attorney General [now the Secretary, Homeland Security, "Secretary"] for a certificate of citizenship on behalf of a child born outside the United States. The Attorney General [Secretary] shall issue such a certificate of citizenship upon proof to the satisfaction of the Attorney General [Secretary] that the following conditions have been fulfilled:

- 1) At least one parent is a citizen of the United States, whether by birth or naturalization.
- 2) The child is physically present in the United States pursuant to a lawful admission.
- 3) The child is under the age of 18 years and in the legal custody of the citizen parent.

....

(b) Attainment of citizenship status; receipt of certificate

Upon approval of the application . . . [and] upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this chapter of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the Attorney General [Secretary] with a certificate of citizenship.

Section 101(b)(1)(E) of the former Act, 8 U.S.C. § 1101(b)(1)(E), states, in pertinent part, that the term "child" means an unmarried person under twenty-one years of age who is-

[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.

The record contains adoption decree evidence establishing that the applicant was under the age of sixteen when she was adopted by [REDACTED]. The record reflects further that the applicant was in the legal custody of [REDACTED] and that she resided with [REDACTED] for at least two years. The applicant therefore qualifies as a "child" for section 322 of the former Act purposes.

Nevertheless, the AAO finds that the applicant failed to establish that she was physically present in the U.S. pursuant to a lawful admission prior to her eighteenth birthday. Moreover, in order to qualify for a certificate of citizenship under section 322 of the former Act, the applicant must also establish that she satisfies the requirements set forth in section 322(b) of the former Act. The applicant failed to meet the requirements set forth in section 322(b) of the former Act, because the Immigration and Naturalization Service (Service, now U.S. Citizenship and Immigration Services, CIS) did not receive or approve her certificate of citizenship application before she turned eighteen on May 5, 1968, and because the applicant did not take an oath of allegiance prior to her eighteenth birthday.

The AAO finds that the applicant also does not qualify for a certificate of citizenship under sections 320 and 321 of the former Act.

Section 320 of the former Act provided in pertinent part 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.

Section 321 of the former 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 failed to establish that her adoptive mother was a naturalized U.S. citizen and the record contains no evidence to indicate that the applicant was admitted into the United States as a lawful permanent resident prior to her eighteenth birthday. Moreover, the applicant failed to establish that she meets the definition of "child" as set forth in section 101(c) of the former Act, 8 U.S.C. § 1101(c) for sections 320, 321 and 301 of the former Act purposes.

Section 101(c) of the former Act stated in pertinent part that:

(c) As used in title III-

(1) The term "child" means an unmarried person under twenty-one years of age and includes a child . . . adopted in the United States, if such . . . 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 . . . adopting parent or parents at the time of such . . . adoption.

The adoption document contained in the record reflects that the applicant was adopted in Mexico prior to her sixteenth birthday. The applicant failed, however to establish that she was adopted in the United States prior to the age of sixteen, as required by section 101(c) of the former Act.

Because the applicant does not meet the definition of a "child" under section 101(c) of the former Act, she also fails to qualify for citizenship under section 301(a)(7) of the former Act, which states in pertinent part that:

The following shall be nationals and citizens of the United States at birth: . . . a person born outside the geographical limits of the United States . . . of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States . . . for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years.

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 meet her burden in the present matter. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.