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

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JUN 14 2005

FILE:



Office: EL PASO, TEXAS

Date:

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship pursuant to § 321 of the former Immigration and Nationality Act; 8 U.S.C. § 1432

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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, El Paso, 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 April 30, 1974 in Mexico to non-U.S. citizen natural parents. The applicant was adopted in 1979 by his adoptive mother, who has been a U.S. citizen since birth. The applicant was admitted into the United States as a visitor in January 2004. The applicant seeks a certificate of citizenship based on his adoptive mother's U.S. citizenship. The district director concluded that the applicant was statutorily ineligible for a certificate of citizenship under § 301(a)(7) of the former Immigration and Nationality Act (the former Act); 8 U.S.C. § 1401(a)(7), because he was not born of a U.S. citizen parent. The district director also determined that the applicant was ineligible for a certificate of citizenship pursuant to the repealed § 321 of the former Act, 8 U.S.C. § 1432, since he was never admitted to the United States as a permanent resident. The application was denied accordingly.

On appeal, the applicant, asserts that the district director erroneously applied §§ 301(a)(7) and 321 of the former Act to the applicant's case. The applicant also expresses the opinion that the distinction between natural and adoptive children found in the Act constitutes discrimination.

Sections 320 and 322 of the former Act were amended by the Child Citizenship Act of 2000 (CCA), which took effect on February 27, 2001, and § 321 of the former Act, 8 U.S.C. § 1432, was repealed. The AAO notes that legal precedent decisions have clearly stated that the provisions of the CCA are not retroactive and that the amended provisions of the Act apply only to persons who were not yet eighteen years old as of February 27, 2001. Because the applicant was over the age of eighteen on February 27, 2001, the AAO finds that he is not eligible for the benefits of the amended sections of the Act. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Rather, provisions of the Act prior to amendment (former Act) apply to the applicant's case.

The applicant does not qualify for citizenship pursuant to § 320 of the former Act, 8 U.S.C. § 1431. Former § 320 of the Act 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.

The record does not establish that either of the applicant's natural parents was a U.S. citizen at the time of his birth. The applicant therefore does not qualify for U.S. citizenship under § 320 of the former Act.

The applicant also fails to qualify for U.S. citizenship under § 322 of the former Act. Section 322 of the former Act provided, in pertinent part, that:

(a) 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) 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.

The AAO notes that, whether or not an applicant satisfies the requirements set forth in § 322(a) of the former Act, § 322(b) of the Act requires that an applicant also establish his or her application for citizenship was approved by Citizenship and Immigration Service (CIS) prior to the applicant's eighteenth birthday, and that the applicant took an oath of allegiance prior to turning eighteen. The AAO finds that the applicant in the present case did not meet the requirements set forth in § 322(b) of the former Act, because CIS did not approve his certificate of citizenship application before he turned eighteen, and because the applicant did not take an oath of allegiance prior to his eighteenth birthday.

The Applicant also fails to satisfy the requirements of former § 321 of the Act, which 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 record reflects that the applicant was not admitted to the United States as a lawful permanent resident; hence, he has not established subsection (5) above. Finally, the applicant does not qualify for a certificate of

citizenship pursuant to § 301(a)(7) of the former Act; 8 U.S.C. § 1401(a)(7), based on the claim that he acquired U.S. citizenship at birth through his adoptive mother.

Section 301(a)(7) of the former Act 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.

The applicant objects to the district director's interpretation that the above provision requires a blood relationship between the applicant and the U.S. citizen parent. The statutory language above, however, refers to "a person born. . . of parents. . ." This assumes a blood relationship. The applicant was not born of parents one of whom was a citizen of the United States.

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 established his eligibility for a certificat of citizenship under any of the pertinent provisions of the former Act; therefore, the appeal will be dismissed.

ORDER: The appeal is dismissed.