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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

Office: KANSAS CITY, MO

Date: JUN 16 2005

IN RE:

Applicant:

APPLICATION:

Application for Certificate of Citizenship pursuant to Section 320 of the Immigration and Nationality Act, 8 U.S.C. § 1431 and Section 321 of the former Immigration and Nationality Act, 8 U.S.C. § 1432.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED¹

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.

For
John
Robert P. Wiemann, Director
Administrative Appeals Office

¹ The AAO notes that the applicant's attorney of record was disbarred by the Kansas Supreme Court on August 31, 2004.

DISCUSSION: The application was denied by the Interim District Director, Kansas City, Missouri, 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 8, 1978. The applicant's father, [REDACTED] was born in Mexico on January 13, 1946, and he became a naturalized U.S. citizen on September 22, 1995, when the applicant was seventeen years old. The applicant's mother, [REDACTED] was born in Mexico, and she is not a U.S. citizen. The applicant's parents married in Mexico on August 14, 1981. The applicant seeks a certificate of citizenship pursuant to sections 320 and 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1431 and 1433, and pursuant to section 321 of the former Immigration and Nationality Act (former Act), 8 U.S.C. § 1432.

The interim district director concluded that the applicant was ineligible for citizenship under sections 320 and 322 of the Act, because he was over the age of eighteen on February 27, 2001, when the amended provision took effect, and because he failed to meet the immigration status requirements set forth in each provision. The interim district director concluded further that the applicant was ineligible for citizenship under section 321 of the former Act, because he had failed to establish that his parents were legally separated prior to his eighteenth birthday or that his father had been awarded legal custody pursuant to a legal separation between his parents. The application was denied accordingly.

On appeal the applicant, through counsel, asserts that he met section 322 of the Act requirements prior to his eighteenth birthday and that he is therefore entitled to citizenship under section 322 of the Act. Counsel additionally asserts that the applicant qualifies for citizenship under section 321 of the former Act because his parents separated prior to the applicant's eighteenth birthday, and because the applicant's father had custody of the applicant. Counsel asserts further that the applicant qualifies for citizenship pursuant to section 274(a)(b)(3) of the Act, and pursuant to 8 U.S.C. § 1401(b) (section 301(b) of the Act).

Section 301(b) of the Act states in pertinent part that the following shall be nationals and citizens of the United States at birth:

[A] person born in the United States to a member of an Indian, Eskimo, Aleutian, or other aboriginal tribe: Provided, That the granting of citizenship under this subsection shall not in any manner impair or otherwise affect the right of such person to tribal or other property.

The AAO finds that the record contains no evidence to establish that the applicant is eligible for citizenship pursuant to the provisions set forth in section 301(b) of the Act.

In addition to the above findings, the AAO notes that the Act does not contain a provision entitled, "section 274(a)(b)(3)". The Act does contain a provision entitled "section 274A(b)(3)", 8 U.S.C. § 1324a(b)(3). However, this provision pertains to employment authorization documentation rather than U.S. citizenship requirements. The provision is thus not relevant to the present appeal.

The AAO notes further that 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 eighteenth birthdays as of February 27, 2001.² Legal precedent decisions have made clear that the

² Section 320 of the Act states in pertinent part that:

provisions of the CCA are not retroactive and that the amended provisions of sections 320 and 322 of the Act apply only to persons who were not yet eighteen years old as of February 27, 2001. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Because the applicant was over the age of eighteen on February 27, 2001, he is not eligible for the benefits of sections 320 or 322 of the Act.

The AAO finds further that the applicant has failed to establish that he qualifies for citizenship pursuant to section 321 of the former Act. Section 321(a) of the former Act provided that:

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- (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.

Section 322 of the Act provides, in pertinent part that:

(a) A parent who is a citizen of the United States . . . may apply for naturalization on behalf of a child born outside of the United States who has not acquired citizenship automatically under section 320. The Attorney General [now Secretary, Homeland Security, "Secretary"] shall issue a certificate of citizenship to such applicant 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 United States citizen parent--
 - (A) has . . . been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years; or
 - (B) has . . . a citizen parent who has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years.
- (3) The child is under the age of eighteen years.
- (4) The child is residing outside of the United States in the legal and physical custody of the applicant
- (5) The child is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.

(b) Upon approval of the application (which may be filed from abroad) and . . . upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this Act 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.

[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 both of his parents became naturalized U.S. citizens prior to his eighteenth birthday. Moreover, the record contains no evidence to establish that the applicant's parents sought or obtained a legal separation or divorce prior to the applicant's eighteenth birthday, or that the applicant's father obtained legal custody over the applicant.

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 failed to meet his burden of proof in the present matter. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.