

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

Handwritten mark

PUBLIC COPY



FILE: [REDACTED] OFFICE: LOS ANGELES, CA DATE: JUL 05 2006

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:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Los Angeles, California. The matter 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 February 13, 1985. The applicant's father, [REDACTED] was born in Mexico, and he became a naturalized U.S. citizen on December 6, 2000, when the applicant was fifteen. The applicant's mother was born in Mexico and she is not a U.S. citizen. The applicant's parents did not marry. The applicant was admitted into the United States as a lawful permanent resident on November 29, 2001. He seeks a Certificate of Citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. §1431.

The district director concluded that the applicant was ineligible for citizenship under section 320 of the Act because he had failed to establish he resided in the United States in the legal and physical custody of his U.S. citizen father. The application was denied accordingly.

On appeal, the applicant concedes that he does not physically live with his father. The applicant asserts, however, that he is very close to his father and that his father has cared for him emotionally and financially throughout his life. On this basis, the applicant concludes that he meets the legal and physical custody requirements set forth in section 320 of the Act.

Section 320(a) of the Act states in pertinent part, that:

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 101(c)(1) of the Act, 8 U.S.C. § 1101(c)(1), states in pertinent part that for citizenship and naturalization purposes:

The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere . . . if such legitimation . . . takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating . . . parent or parents at the time of such legitimation.

The applicant has failed to establish that he meets the definition of "child" as set forth in section 101(c)(1) of the Act. The AAO notes that pursuant to Article 130 of the Mexican Constitution, a child born out of wedlock in Mexico becomes legitimated upon the civil marriage of his or her parents. *Matter of M-D-*, 3 I&N Dec. 485 (BIA 1949). *See also, Matter of Hernandez*, 14 I&N Dec. 608 (BIA 1974) and *Matter of Rodriguez-Cruz*, 18 I&N Dec. 72 (BIA 1981). In the present matter, the applicant's parents did not marry. The applicant was therefore not legitimated pursuant to Article 130 of the Mexican Constitution.

Section 7004 of the California Civil Code (C.C.C.) provides in pertinent part that legitimation of a child can be accomplished if the natural father receives the child into his home and openly holds the child out as his own. The evidence in the present record reflects that the applicant has lived with his mother throughout his life. The applicant therefore failed to establish that his father received him into his home and held him out as his own child prior to the applicant's sixteenth birthday.

Volume 8 of the Code of Federal Regulations (8 C.F.R.) section 320.1(1)(iii), provides that a natural father must reside with, and legitimate a child born out of wedlock in order to meet the "legal custody" requirements contained in section 320 of the Act. The applicant has failed to establish that he resided with, or was legitimated by his father. Accordingly, the applicant does not meet the "legal custody" requirements set forth in section 320 of the Act.

The AAO notes further that even if the applicant had established that he was legitimated by his father and that he met the definition of "child" for section 101(c)(1) of the Act purposes, the applicant would nevertheless fail to qualify for citizenship under section 320 of the Act.

Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33) provides that, "[t]he term "residence" means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent." The record reflects that the applicant's father's "principal, actual dwelling place in fact" is in Santa Barbara, California, and that the applicant resides with his mother in Santa Ana, California, an approximate two to three hours drive away. Accordingly, the applicant has failed to establish that he resides in the physical custody of his U.S. citizen father for section 320 of the Act purposes.

8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. The applicant has failed to establish that he qualifies for a Certificate of Citizenship under section 320 of the Act. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed. ¹

¹ It is noted that the present decision is without prejudice to the applicant's filing, if eligible, an N-400, Application for Naturalization pursuant to section 316 of the Act, 8 U.S.C. § 1427.