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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: Office: HARLINGEN, TEXAS Date: **JAN 04 2007**

IN RE: Applicant: 

APPLICATION: Application for Certificate of Citizenship under Sections 320 and 322 of the
Immigration and Nationality Act; 8 U.S.C. §§ 1431 and 1433.

ON BEHALF OF APPLICANT:



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, 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 in Mexico on February 10, 1995. The record does not reflect that the applicant's mother, [REDACTED] is a U.S. citizen. The applicant's father, [REDACTED] was born in Mexico on May 10, 1958, and he became a naturalized U.S. citizen on May 16, 1997, when the applicant was two years old. On June 16, 2004, the applicant applied for admission to the United States at the [REDACTED] claiming to be a U.S. citizen. The applicant's birth certificate was determined to be fraudulent, and he was refused admission. The applicant was paroled into the United States pending proceedings before an Immigration Judge. He presently seeks a certificate of citizenship under sections 320 and 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1431 and 1433.

The district director concluded that the applicant failed to establish that he was present in the United States pursuant to a lawful admission, and thus he did not show that he was eligible for a certificate of citizenship under sections 320 or 322 of the Act. *Decision of the District Director*, dated June 1, 2005. The application was denied accordingly.

On appeal, counsel for the applicant contends that the applicant is present in the United States pursuant to a lawful entry, as a DHS officer issued a Notice to Appear ("NTA") specifically for the purpose of allowing the applicant to file the present Form N-600 application. *Statement from Counsel on Form I-290B*, dated June 28, 2005. Counsel asserts that the NTA supercedes a concurrently issued Form I-94 Departure Record for the purpose of the present application. *Id.*

The record contains a statement from counsel on Form I-290B; a copy of a Form I-94 Departure Record issued to the applicant; a copy of an NTA issued to the applicant; a copy of the applicant's birth certificate; a copy of the applicant's school records; a copy of the naturalization certificate of the applicant's father; a copy of the marriage certificate for the applicant's parents, and; a copy of the applicant's mother's permanent resident card. The entire record was considered in deciding this appeal.

It is noted that counsel indicated on Form I-290B that he would send a brief and/or evidence to the AAO within 30 days of filing the appeal. The appeal was filed on June 29, 2005. However, as of November 21, 2006, the AAO had received no further documentation or correspondence from the applicant or counsel. On November 21, 2006, the AAO sent a facsimile to counsel with notice that a brief or additional evidence had not been received, and affording five days in which to provide a copy of any missing filing. On November 21, 2006, counsel submitted notification to the AAO that no brief or additional evidence was submitted. Thus, the record is deemed complete.

Section 320 of the Act was 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. Because the applicant was six years old on February 27, 2001, he meets the age requirement for benefits under the CCA.

Section 320 of the Act states in pertinent part that:

- (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 the following:

(a) A parent who is a citizen of the United States (or, if the citizen parent has died during the preceding 5 years, a citizen grandparent or citizen legal guardian) 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 shall issue a certificate of citizenship to such applicant upon proof, to the satisfaction of the Attorney General, that the following conditions have been fulfilled:

- (1) At least one parent (or, at the time of his or her death, was) is a citizen of the United States, whether by birth or naturalization.
- (2) The United States citizen parent--
 - (A) has (or, at the time of his or her death, had) 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 (or, at the time of his or her death, had) 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 (or, if the citizen parent is deceased, an individual who does not object to the application).

(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, except as provided in the last sentence of section 337(a), 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 with a certificate of citizenship.

(c) Subsections (a) and (b) 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).

The applicant is not residing in the United States pursuant to a lawful admission. As noted above, on June 16, 2004, the applicant applied for admission to the United States at the [REDACTED] claiming to be a U.S. citizen. The applicant's birth certificate was determined to be fraudulent, and he was refused admission. DHS officers determined that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act, as he was an alien who, by fraud or willfully misrepresenting a material fact, sought to procure admission into the United States. The applicant was paroled into the country so that he may appear before an Immigration Judge.

Section 101(a)(13)(B) of the Act states that "[a]n alien who is paroled under section 212(d)(5) . . . shall not be considered to have been admitted." Section 101(a)(13)(B) of the Act; *see also Leng May Ma v. Barber*, 357 U.S. 185 (1958). Upon his application for entry, DHS officers found the applicant inadmissible, which further reflects that he was not admitted. Thus, though the applicant's presence in the United States is authorized pursuant to his parolee status, he has not been admitted as contemplated by the Act.

Accordingly, the applicant does not meet the requirements of section 320(a)(3) of the Act, as he is not residing in the United States "pursuant to a lawful admission for permanent residence." Nor does the applicant meet the requirements of section 322(a)(5) of the Act, as he is not "temporarily present in the United States pursuant to a lawful admission." Based on the foregoing, the applicant has not shown that he is eligible for a certificate of citizenship under either sections 320 or 322 of the Act.

The regulation at 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.