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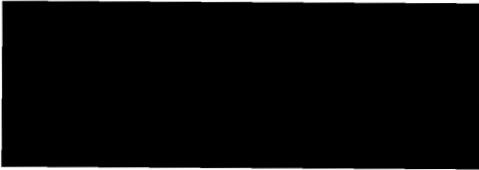
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: HOUSTON, TX Date: JAN 04 2007

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 Interim District Director, Houston, Texas and is now before the Administrative Appeals Office (AAO) on appeal. The district director's decision will be withdrawn and the matter remanded for entry of a new decision.

The record reflects that the applicant was born in Mexico October 4, 1992. The applicant's mother, [REDACTED], was born in Mexico and became a naturalized U.S. citizen on July 18, 2003, when the applicant was ten years old. [REDACTED] the applicant's father, was born in Mexico and the evidence of record does not indicate that he has acquired another citizenship. The record reflects that the applicant's parents were married on February 21, 2001. The record indicates that the applicant was residing in the United States and held V nonimmigrant status at the time of filing. He seeks a certificate of citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The district director concluded that, as the applicant did not hold the status of lawful permanent residence, he was ineligible for benefits under section 320 of the Act. Accordingly, he denied the Form N-600, Application for Certificate of Citizenship.

On appeal, the applicant's mother states her belief that her son automatically acquired U.S. citizenship at the time of her naturalization

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 eight 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.

While the record reflects that the applicant's mother became a naturalized U.S. citizen in 2003, it does not indicate that the applicant is residing in the United States as a lawful permanent resident, as required by section 320(a)(3) of the Act. The AAO notes, however, that the applicant on the date of his mother's naturalization, appears to have been residing in the United States as a V nonimmigrant, based on the copy of the Employment Authorization Card included in the record. Guidance issued by the legacy Immigration and Naturalization Service, now Citizenship and Immigration Services (CIS), on December 21, 2001 allowed children in V nonimmigrant status whose parent subsequently naturalized to apply immediately for

adjustment of status as the immediate relative of a U.S. citizen.¹ In the instant case, the applicant's mother naturalized on July 18, 2003 and the applicant would have become eligible to apply for adjustment of status.

Although the district director based his denial on the applicant's failure to establish that he held lawful permanent resident (LPR) status, the record does not indicate that the district director requested evidence from the applicant regarding his status. The regulation at 8 C.F.R. § 103.2(b)(8) requires CIS to issue a request for evidence where a record offers no evidence of ineligibility and initial evidence or eligibility information is missing. Accordingly, the application will be remanded to allow the applicant the opportunity to provide evidence that he adjusted status prior to filing the Form N-600. If he is able to establish that he held lawful permanent resident status at the time of filing, the applicant is eligible for a certificate of citizenship under section 320 of the Act.

If the applicant was not a lawful permanent resident at the time he submitted the Form N-600, the application must be denied. However, if the applicant subsequently applied for adjustment and now holds LPR status, he may submit a new application for a certificate of citizenship as he has not yet reached 18 years of age.²

For the reasons previously discussed, the matter will be remanded to the director so that he may obtain evidence related to the applicant's status at the time of filing.

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.

ORDER: The district director's decision of January 26, 2004 is withdrawn. The petition is remanded to the district director for entry of a new decision, which, if adverse to the petitioner, shall be certified to the AAO for review.

¹ Memorandum from Stuart Anderson, Executive Associate Commissioner, Office of Policy and Planning, Immigration and Naturalization Service, *Policy Guidance for the V nonimmigrant classification* (December 21, 2001).

² The above referenced memorandum also indicates that with the naturalization of the parent, the V nonimmigrant status of any child will "terminate after his or her current period of admission ends." In the instant case, the Employment Authorization Card issued to the applicant shows an expiration date of November 13, 2004. In that the applicant's mother naturalized on July 18, 2003, it appears that the applicant's V status would have terminated on November 13, 2004. If the applicant's nonimmigrant status lapsed on November 13, 2004 and he did not file for adjustment, he may no longer be in lawful status.