

**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

E2

PIRI IC COPY



FILE:

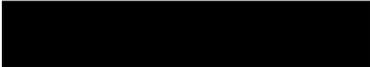


Office: HOUSTON, TEXAS

Date: JUL 02 2007

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship under Section 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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Houston, 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 November 21, 1980 in Mexico. The applicant's parents, [REDACTED] and [REDACTED], were married on December 21, 1979. The applicant was admitted to the United States as a lawful permanent resident on November 18, 1988, when he was seven years old. The applicant's mother was naturalized on April 6, 1999, when the applicant was 18 years old. The applicant presently seeks a certificate of citizenship pursuant to section 321 of the former Immigration and Nationality Act (the Act), 8 U.S.C. § 1432.

The district director denied the applicant's citizenship claim upon finding that he had failed to establish that both his parents were U.S. citizens as required by section 321(a)(1) of the former Act, 8 U.S.C. § 1432(a)(1). The district director also found that the applicant was ineligible for benefits under section 320 of the Act, 8 U.S.C. § 1431, as amended by the Child Citizenship Act of 2000 (CCA) because he was over 18 when the CCA took effect. The application was denied accordingly.

On appeal, the applicant indicates that he twice submitted a copy of his parents' marriage certificate and his mother's naturalization. The applicant requests "another chance to become a citizen of this great country." See Statement of the Applicant on Form I-290B, Notice of Appeal. On the Form I-290B, the applicant indicated that he would be submitting a brief and/or evidence to the AAO within 30 days. On April 24, 2007, the AAO informed the applicant that such brief and/or evidence had not been received, and allowed the applicant an opportunity to resubmit the materials. The AAO has not received any additional materials from the applicant to date. The AAO will consider the application on the basis of the evidence currently in the record.

The AAO first notes that the CCA, which took effect on February 27, 2001, amended sections 320 and 322 of the Act, and repealed section 321 of the Act. The provisions of the CCA are not retroactive, and the amended provisions of section 320 and 322 of the Act apply only to persons who were not yet 18 years old as of February 27, 2001. Because the applicant was over the age of 18 on February 27, 2001, he is not eligible for the benefits of section 320 of the amended Act. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

Pursuant to section 321 of the former Act, 8 U.S.C. § 1432,

(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.

(emphasis added). The record contains the applicant's birth certificate, the applicant's parents' marriage certificate, and the applicant's mother's naturalization certificate. The record evidence indicates that the applicant was born in Mexico on November 21, 1980 to two Mexican citizens. The applicant's mother was naturalized on April 6, 1999, when the applicant was already 18 years old. There is no evidence to suggest that the applicant's father's is a U.S. citizen. The applicant's parents were married on December 21, 1979. The applicant indicates on his Form N-600 Application for Certificate of Citizenship, that his parents are married. His mother's naturalization certificate reflects her marital status as "married." There is no evidence that the applicant's parents are divorced or legally separated.

8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. In order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is "probably true" or "more likely than not." *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989).

Section 321(a)(1) of the former Act, 8 U.S.C. § 1431(a)(1), requires the applicant to establish that both his parents naturalized prior to his 18th birthday. The applicant was already 18 when his mother naturalized, and there is no evidence that his father is a U.S. citizen or deceased, or that the applicant's parents were legally separated.

The AAO concludes that the applicant has failed to meet his burden to establish, by a preponderance of the evidence, that he can derive U.S. citizenship through his mother. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.¹

¹ The AAO notes 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.