



U.S. Citizenship
and Immigration
Services

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: **MAY 04 2007**

IN RE:

Applicant:

APPLICATION:

Application for Certificate of Citizenship under Section 321 of the former Immigration and Nationality Act; Pub. L. 82-414, 66 Stat. 245 (June 27, 1952).

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 Director, California Service Center, 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 December 11, 1952. The applicant does not assert, and the record does not show, that her mother is a U.S. citizen. The applicant's father, [REDACTED] was born in Mexico on August 11, 1923, and he became a naturalized U.S. citizen on December 17, 1990, when the applicant was 38 years old. The record reflects that the applicant's parents were married on September 15, 1944. The applicant was admitted into the United States as a lawful permanent resident on September 20, 1971, when she was eighteen years old. She presently seeks a certificate of citizenship under section 321 of the former Immigration and Nationality Act (the former Act), Pub. L. 82-414, 66 Stat. 245 (June 27, 1952).

The director concluded that the applicant failed to establish that she became a U.S. citizen by operation of law due to the fact that her father did not become a naturalized U.S. citizen prior to her eighteenth birthday, as required by section 321 of the former Act. *Decision of the Director*, dated July 7, 2006. The application was denied accordingly.

On appeal, the applicant states that she understands that U.S. immigration law affords citizenship to a child when her parent becomes a U.S. citizen. *Statement from Applicant on Form I-290B*, submitted August 9, 2006. Thus, the applicant believes she became a U.S. citizen when her father naturalized. *Id.*

Sections 320 and 322 of the former Act were amended by the Child Citizenship Act of 2000 (CCA), which took effect on February 27, 2001, and section 321 of the former Act, 8 U.S.C. § 1432, was repealed. Section 320 of the Act, as amended, permits a child born outside of the U.S. to automatically become a citizen of the United States upon fulfillment of the following conditions:

- (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.

The AAO notes that legal precedent decisions have clearly stated that the provisions of the CCA are not retroactive and that the amended provisions of the Act apply only to persons who were not yet eighteen years old as of February 27, 2001. Because the applicant was over the age of eighteen on February 27, 2001, the AAO finds that she 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).

Section 321 of the former Act provides the following:

Children born outside United States of alien parents; conditions for automatic citizenship

- (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;
- (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 such child is unmarried and under the age of eighteen 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 (1) of this subsection, or the parent naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of eighteen years.

Upon review, the applicant has not shown that she met the requirements of section 321(a)(1) of the former Act. Specifically, as noted by the district director, the applicant's father became a naturalized U.S. citizen when the applicant was 38 years old. Thus, the applicant has not shown that her parent or parents naturalized while she was under the age of eighteen years, as required by section 321(a)(4) of the former Act. For this reason, the application may not be approved.

It is further noted that the applicant has not asserted or shown that her mother is or was a United States citizen. Thus, the applicant has not established that both of her parents became U.S. citizens, as contemplated by section 321(a)(1) of the former Act. Nor has the applicant shown that her mother was deceased at the time of her father's naturalization, such that he was a surviving parent as contemplated by section 321(a)(2) of the former Act. Nor has the applicant shown that her parents were legally separated at the time of her father's naturalization, as contemplated by section 321(a)(3) of the former Act, such that she might potentially derive citizenship based solely on the naturalization of her father. For these additional reasons, the applicant has not established that she meets the requirements of section 321 of the former Act.

Based on the foregoing, the applicant has not shown that she is eligible for a certificate of citizenship pursuant to the present Form N-600 application.

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 her burden. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.