

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

EZ

[Redacted]

FILE:

Office: DALLAS, TEXAS

Date:

MAY 08 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:

[Redacted]

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, Dallas, 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 May 8, 1966, in Coahuila, Mexico. The applicant's father, [REDACTED] was born in Mexico on October 15, 1943. The applicant's father acquired U.S. citizenship at birth, as evidenced by Certificate of Citizenship No. [REDACTED]. The applicant's mother, [REDACTED] was born in Mexico on March 17, 1946. She became a naturalized U.S. citizen on July 1, 2004, when the applicant was 38 years old. The applicant's parents were married on October 17, 1963. The applicant was admitted to the United States as a lawful permanent resident on December 10, 1973, when he was seven years old.

The district director evaluated the applicant's eligibility for citizenship under section 301(a)(7) of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1401(a)(7). The AAO notes that "[t]he applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth." *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9<sup>th</sup> Cir. 2000) (citations omitted). The applicant was born on May 8, 1966. Section 301(a)(7) of the former Act is therefore applicable to his citizenship claim.

Section 301(a)(7) of the former Act states that the following shall be nationals and citizens of the United States at birth:

[A] person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years: *Provided*, That any periods of honorable service in the Armed Forces of the United States by such citizen parent may be included in computing the physical presence requirements of this paragraph.

The district director rejected the applicant's claim of citizenship under section 301(a)(7) of the former Act because the applicant failed to provide any evidence to establish his father's required physical presence in the United States prior to the applicant's date of birth.

On appeal, the applicant claims citizenship pursuant to section 320 of the amended Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

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 established 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 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).

The AAO finds that the district director correctly rejected the applicant's claim of citizenship pursuant to section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7). Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), requires the applicant to establish that his father was physically present in the United States for at least 10 years, five of which while over the age of 14. In response to a request for further evidence, the applicant submitted two documents to establish his father's required physical presence. First, the applicant submitted print-out entitled "Deluxe Chexsystems Inquiry" purporting to establish that his father's social security number became available for issuance in 1963. Second, the applicant submitted a notarized letter from his father's cousin. The notarized letter establishes, at best, that that applicant's father resided in the United States until the age of six. Contrary to the applicant's assertion, the evidence presented suggests that the applicant's father was not physically present in the United States between 1949 and 1963. The applicant does not claim, nor is there evidence suggesting, that his father served in the U.S. Armed Forces. The applicant has failed to establish that his father was physically present in the United States for at least 10 years, five of which while over the age of 14, prior to his birth in 1966. Consequently, the AAO finds that the applicant has failed to establish that he acquired U.S. citizenship at birth.

The AAO notes further that the applicant does not qualify for citizenship pursuant to section 320 of the former Act, 8 U.S.C. § 1431. Section 320 of the Act, 8 U.S.C. § 1431, provided that:

(a) A child born outside of the United States, one of whose parents at the time of the child's birth was an alien and the other of whose parents then was and never thereafter ceased to be a citizen of the United States, shall, if such **parent is naturalized, become a citizen of the United States**, when

(1) such naturalization takes place while such child is under the age of 18 years; and

(2) such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of naturalization or thereafter and begins to reside permanently in the United States while under the age of 18 years.

The applicant's father acquired U.S. citizenship at birth, not by naturalization. The applicant's mother naturalized after the applicant's 18<sup>th</sup> birthday. The applicant therefore does not qualify for U.S. citizenship under section 320 of the former Act, 8 U.S.C. § 1431.

The AAO notes that persons who acquired citizenship automatically under section 321 of the former Act, 8 U.S.C. § 1432, as previously in force prior to February 27, 2001, may apply for a certificate of citizenship at any time. *See Matter of Rodriguez-Tejedor, supra.*

Section 321 of the former Act provided, in pertinent part, that:

(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.

The record reflects that the applicant's parents were married on October 17, 1963 and were not legally separated. The applicant's mother naturalized on July 1, 2004, after his 18<sup>th</sup> birthday. Therefore, the AAO finds that the applicant is also not eligible for citizenship pursuant to the section 321 of the former Act, 8 U.S.C. § 1432.

The AAO also notes that the applicant fails to qualify for U.S. citizenship under section 322 of the former Act, 8 U.S.C. § 1433. Section 322 of the former Act provided, in pertinent part, that:

(a) A parent who is a citizen of the United States may apply to the Attorney General [now the Secretary, Homeland Security, "Secretary"] for a certificate of citizenship on behalf of a child born outside the United States. The Attorney General [Secretary] shall issue such a certificate of citizenship upon proof to the satisfaction of the Attorney General [Secretary] that the following conditions have been fulfilled:

- (1) At least one parent is a citizen of the United States, whether by birth or naturalization.
- (2) The child is physically present in the United States pursuant to a lawful admission.
- (3) The child is under the age of 18 years and in the legal custody of the citizen parent.

(b) Upon approval of the application . . . [and] upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this chapter of an

applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the Attorney General [Secretary] with a certificate of citizenship.

The AAO notes that, whether or not an applicant satisfies the requirements set forth in section 322(a) of the former Act, he or she is required to establish his or her application for citizenship was approved by Citizenship and Immigration Service (CIS) prior to the applicant's 18<sup>th</sup> birthday, and that the applicant took an oath of allegiance prior to turning 18. The AAO finds that the applicant in the present case did not meet the requirements set forth in section 322(b) of the former Act, because he did not apply for a certificate of citizenship before he turned 18, because no such application was approved by CIS, and because the applicant did not take an oath of allegiance prior to his 18<sup>th</sup> birthday.

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. The applicant in the present case has not met his burden and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.