



U.S. Citizenship
and Immigration
Services

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FILE:

Office: LOS ANGELES, CA

Date:

JUL 01 2008

IN RE:

Applicant:

APPLICATION:

Application for Certificate of Citizenship.

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Form N-600, Application for Certificate of Citizenship (Form N-600) was denied by the District Director, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the Form N-600 application will be denied.

The record reflects that the applicant was born in Ecuador on March 26, 1960. He turned eighteen on March 26, 1978. The applicant was adopted in Ecuador on September 30, 1960, by [REDACTED] and [REDACTED] both native-born U.S. citizens. The applicant was admitted into the United States as a lawful permanent resident on July 5, 1961, when he was one year old. The applicant presently seeks a certificate of citizenship based on the claim that he derived or acquired U.S. citizenship through his adoptive parents.

The district director determined the applicant had failed to establish that he became a naturalized U.S. citizen through his parents under section 322 of the former Immigration and Nationality Act, 8 U.S.C. § 1433, prior to his eighteenth birthday. The district director determined the applicant was also ineligible to derive U.S. citizenship through his parents under amended citizenship laws because he was over the age of eighteen when the amended provisions went into effect. The Form N-600 application was denied accordingly.

On appeal the applicant asserts, through counsel, that he qualifies for U.S. citizenship under section 301(g) of the Act, 8 U.S.C. § 1401(g), and that the district director erred in not assessing his citizenship claim under that provision. The applicant asserts further that the district director failed to specify the reasons that the applicant is not eligible for citizenship under section 322 of the former Act, and he asserts that a naturalization application that his parents filed on his behalf when he was under the age of fourteen, was wrongfully denied by the Immigration and Naturalization Service (Service, now, U.S. Citizenship and Immigration Service, CIS) and should be *sua sponte* reopened by CIS.¹

The AAO notes that its appellate jurisdiction is limited to authority specifically granted through the regulations. The AAO has no jurisdictional authority to address or *sua sponte* reopen naturalization application proceedings.

“[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.” See *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9th Cir. 2000). (Citations omitted). The applicant was born in Ecuador on March 26, 1960. Section 301(a)(7) of the former Act (now section 301(g) of the Act, 8 U.S.C. § 1401(g)) would therefore apply to an acquisition of citizenship at birth claim by the applicant.

Section 301(a)(7) of the former Act states in pertinent part 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 . . . 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

¹ Through counsel, the applicant indicated that he would submit an additional brief and or evidence within 30 days after receipt of FOIA Request results. No additional brief or evidence was received by the AAO. On April 10, 2008, the AAO faxed a request for copies of documents that may have been submitted in the applicant’s case. Counsel replied that no additional brief or evidence would be submitted in the applicant’s case.

physically present in the United States . . . for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years.

The Board of Immigration Appeals held in *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 155 (BIA 2001,) that the statutory language contained in section 301 of the Act, “[r]equires that the child be born of a United States citizen. There is no indication that this section applies to an adopted child.” The applicant in the present matter was adopted by his U.S. citizen parents. He is therefore not eligible to acquire citizenship under section 301(a)(7) of the Act.

It is noted that sections 320 and 322 of the former Act, 8 U.S.C. §§ 1431 and 1433, were amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The provisions of the CCA are not retroactive, and sections 320 and 322 of the amended Act apply only to persons who were not yet eighteen years old as of February 27, 2001. *Matter of Rodriguez-Tejedor, supra*. The applicant turned eighteen on March 26, 1978. Because the applicant was over the age of eighteen on February 27, 2001, he is not eligible for consideration under sections 320 and 322 of the Act.²

² Section 320 of the Act, as amended provides in pertinent part that:

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 applies to children born and residing outside of the United States, and provides in pertinent part, that:

(a) A parent who is a citizen of the United States . . . 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 [now Secretary, Department of Homeland Security “Secretary”] shall issue a certificate of citizenship to such applicant 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 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 . . . 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.

The CCA repealed section 321 of the former Act, 8 U.S.C. § 1432. Nevertheless, all persons who acquired citizenship automatically under section 321 of the former Act, as previously in force prior to February 27, 2001, may apply for a certificate of citizenship at any time. *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.

In the present matter, the applicant's adoptive parents are both native-born U.S. citizens. Because neither of the applicant's parents became a U.S. citizen through naturalization, the applicant is not eligible for consideration under section 321 of the former Act.

The AAO notes that the applicant also failed to demonstrate that he derived citizenship through his adoptive parents prior to February 21, 2007, under sections 320 and 322 of the former Act.

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- (4) The child is residing outside of the United States in the legal and physical custody of the applicant
 - (5) The child is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.

Section 320 of the former Act required one of the citizen parents to become a U.S. citizen through naturalization. Because the applicant's adoptive parents are both native-born U.S. citizens, the applicant did not qualify for consideration under section 320 of the former Act.³

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.
- 4) If the citizen parent is an adoptive parent of the child, the child was adopted by the citizen parent before the child reached the age of 16 years
...
- 5) If the citizen parent has not 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-
 - A) the child is residing permanently in the United States with the citizen parent, pursuant to a lawful admission for permanent residence, or
 - B) a citizen parent of the citizen parent 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 Section 320 of the former Act 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.

(b) [U]pon approval of the application . . . [and] upon taking and subscribing before an officer of the Service [CIS] 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.

(c) [S]ubsection (a) of this section shall apply to the adopted child of a United States citizen adoptive parent if the conditions specified in such subsection have been fulfilled.

The record contains a Form N-400, Petition for Naturalization filed by the applicant's mother, on his behalf, in May 1974. The record contains no evidence, however, to demonstrate that prior to his eighteenth birthday, the Service approved an application for a certificate of citizenship for the applicant, or that the applicant took the required oath of allegiance. To the contrary, the evidence in the record reflects that on September 3, 1976, the applicant's mother withdrew the applicant's unadjudicated Petition for Naturalization. The applicant therefore did not satisfy the derivative citizenship requirements set forth in section 322 of the former Act.

The regulation provides at 8 C.F.R. § 341.2(c), that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. The applicant has failed to meet his burden in the present matter. The appeal will therefore be dismissed and the Form N-600 application will be denied.

ORDER: The appeal is dismissed. The application is denied.