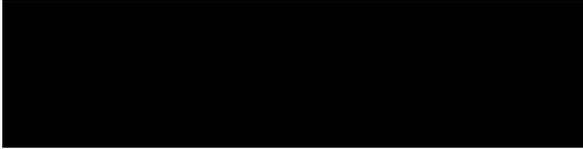




U.S. Citizenship  
and Immigration  
Services

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

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EG

FILE: [Redacted] Office: HARLINGEN, TX Date: NOV 29 2005

IN RE: Applicant: [Redacted]

APPLICATION: Application for Certificate of Citizenship under Section 322 of the Immigration and Nationality Act; 8 U.S.C. § 1433.

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*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Harlingen, Texas. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born on [REDACTED] in Mexico. The record reflects that the applicant's mother, [REDACTED] was born in Mexico on September 14, 1965, and that she derived U.S. citizenship at birth through her U.S. citizen father [REDACTED]. The applicant's father [REDACTED] was born in Mexico and is not a U.S. citizen. The record indicates that the applicant's parents married in Mexico on [REDACTED]. The applicant seeks a certificate of citizenship pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433, based on the claim that he derived U.S. citizenship through his maternal grandfather.

The district director determined that the applicant was ineligible for U.S. citizenship under section 322 of the Act, because he had failed to establish he was under the age of eighteen at the time of his citizenship interview. The application was denied accordingly.

On appeal, the applicant indicates that he met the requirements for deriving citizenship through his U.S. citizen grandfather when he filed his Form N-600, Application for Certificate of Citizenship, and that it is unfair that he should be penalized for U.S. Citizenship and Immigration Services (CIS) application processing delays.

The AAO notes that its appellate jurisdiction is limited, and that the AAO has no jurisdiction over unreasonable delay claims arising under the Act or pursuant to constitutional due process claims. *See generally*, 8 C.F.R. § 103.1(f)(3)(iii) (2003) and 8 C.F.R. § 2.1 (2004). *See also generally*, *Fraga v. Smith*, 607 F.Supp. 517 (U.S. Dist.Ct. Or. 1985) (Relating to federal court jurisdiction over such claims).

Moreover, the AAO finds that the requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and that CIS lacks statutory authority to issue a certificate of citizenship when an applicant fails to meet the relevant statutory provisions set forth in the Act. *See generally*, *Iddir v. INS*, 301 F.3d 492 (7<sup>th</sup> Cir. 2002). The AAO therefore finds that the applicant's eligibility for citizenship under section 322 provisions is not affected or changed by CIS processing delays, and that in order to obtain a certificate of citizenship, the applicant must establish that he fully meets section 322 of the Act requirements.

Section 322 of the Act 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, 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 . . . 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.

(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.

(b) Upon approval of the application (which may be filed from abroad) and . . . upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this Act 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 record reflects that the applicant turned eighteen on December 9, 2002, prior to CIS adjudication or approval of his citizenship application. The applicant therefore does not meet the statutory requirements for citizenship as set forth in section 322 of the Act.

The AAO notes that the applicant has also failed to establish that he derived citizenship through his U.S. citizen mother.

“The 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 December 9, 1984. Section 301(a)(7) of the former Immigration and Nationality Act (former Act), 8 U.S.C. § 1401(a)(7) (now known as section 301(g) of the Act, 8 U.S.C. § 1401(g)) is therefore applicable to his citizenship claim.

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 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 present record contains no evidence to establish that the applicant’s mother was physically present in the U.S. for ten years prior to the applicant’s birth, at least five years of which occurred after his mother turned fourteen.

8 C.F.R. 341.2(c) states 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 not met his burden in this case. The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.<sup>1</sup>

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<sup>1</sup> 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.