



U.S. Citizenship
and Immigration
Services

FE

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

[Redacted]

FILE:

[Redacted]

Office: HARLINGEN, TX

Date:

17 2008

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:

[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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Harlingen, Texas, and the matter 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 March 17, 1988. The applicant's parents, as indicated on his birth certificate, are [REDACTED] and [REDACTED]. The applicant's father acquired U.S. citizenship at birth. The applicant claims that his paternal grandmother, [REDACTED], was a native-born U.S. citizen. He seeks a certificate of citizenship under section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The district director concluded that the applicant had failed to establish that his paternal grandmother was born in the United States as claimed. The director found that the applicant could not establish that his grandmother was born in the United States in light of the more contemporaneous Mexican birth registration in the record. The application was denied accordingly.

On appeal, the applicant maintains that his grandmother was born in Texas. *See Applicant's Appellate Brief.* The applicant explains that his grandmother's family resided in the United States until their relocation to Mexico in 1941 or 42, when the family found it beneficial to register the children's' births (including the applicant's grandmother's) in Mexico. *Id.*

The Child Citizenship Act of 2000 (CCA), which took effect on February 27, 2001, amended sections 320 and 322 of the Act, and repealed section 321 of the Act.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. The applicant's 18th birthday was on March 17, 2006. Because the applicant was under the age of 18 on February 27, 2001, he was eligible for the benefits of the amended Act. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Nevertheless, the applicant did not acquire citizenship under section 320 or 322 of the Act, 8 U.S.C. § 1431 and 1433, or any other provision of the Act.

Section 322 of the Act, 8 U.S.C. § 1433, applies to children born and residing outside of the United States, and provides 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 shall issue a certificate of citizenship to such applicant upon proof, to the satisfaction of the Attorney General, 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--

(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 [citizen parent] (or, if the citizen parent is deceased, an individual who does not object to the application).

(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, except as provided in the last sentence of section 337(a), 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 with a certificate of citizenship.

(c) Subsections (a) and (b) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

Section 322(a)(3) of the Act, 8 U.S.C. § 1433(a)(3) and the regulations promulgated thereunder, at 8 C.F.R. § 322.2(a)(3), require that a certificate of citizenship application be filed, adjudicated, and approved with the oath of allegiance administered before the child's 18th birthday. The record in this case reflects that the applicant reached the age of 18 on March 17, 2006. The AAO therefore finds that the applicant is ineligible for citizenship under the cited provision because he is already 18.¹

The AAO notes that the applicant did not automatically acquire U.S. citizenship under section 320 of the Act, 8 U.S.C. § 1431, because he was not admitted to the United States as a lawful permanent resident prior to his 18th birthday. Likewise, the applicant did not acquire U.S. citizenship under section 301 of the Act, 8 U.S.C. § 1401, because his father was not physically present in the United States for the period required.

The AAO notes “[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship.” *Fedorenko v United States*, 449 U.S. 490, 506 (1981). The U.S. Supreme Court has further stated “it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect. This Court has often stated that doubts ‘should be resolved in favor of the United States and against the claimant.’” *Berenyi v. District Director*, 385 U.S. 630, 671 (1967). Pursuant to 8 C.F.R. § 341.2(c), 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

¹ Having found the applicant statutorily ineligible for citizenship under section 322 of the Act, 8 U.S.C. § 1433, the AAO need not determine whether he has established that his grandmother was a native-born U.S. citizen as claimed.

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

ORDER: The appeal is dismissed.