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U.S. Citizenship and Immigration Services

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JUN 25 2004

FILE: [redacted] Office: HOUSTON, TEXAS Date:

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship.

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born The record reflects that the applicant's fathe and that he derived U.S. citizenship at birth through his mothe as on June 28, 1914, and was a U.S. citizen. The applicant's mother was born in Mexico on October 18, 1944, and is not a U.S. citizen. The applicant's parents were married on April 15, 1971, in Mexico. The applicant seeks a certificate of citizenship through her father, pursuant to section 301(a)(7) of the former Immigration and Nationality Act (former Act) or section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431. In the alternative, the applicant seeks a certificate of citizenship through her grandmother pursuant to section 322 of the former Act.

The district director concluded that the applicant was ineligible for citizenship under section 320 of the Act, because she was over the age of eighteen on when the amended provision took effect. The district director concluded further that the applicant was ineligible for derivative citizenship through her father because she failed to establish that he met the physical presence requirements set forth in section 301(a)(7) of the former Act. In addition, the district director concluded that the applicant was ineligible for citizenship under section 322 of the former Act, because an application for citizenship was not filed on the applicant's behalf prior to the applicant's eighteenth birthday.

On appeal, counsel asserts the applicant established that her father meets the U.S. physical presence requirements set forth in section 301(a)(7) of the former Act, and that the applicant is therefore eligible for derivative U.S. citizenship through her father. Counsel provides no other information on appeal, and does not address the determination that the applicant is ineligible for citizenship under sections 320 of the Act or 322 of the former Act.

"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." 247 F.3d 1026, 1029 (9th Cir. 2000) (citations omitted). The applicant in this case was born in Mexico in The version of section 301 of the Act that was in effect at that time (section 301(a)(7)) therefore controls her claim to derivative citizenship.

Section 301(a)(7) of the former Act provides, in pertinent part, that the following shall be nationals and citizens of the United States at birth:

> (7) [A] person born outside the geographical limits of the United Sates 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.

In order to meet the physical presence requirements as set forth in section 301(a)(7) of the former Act, the applicant must establish that her father was physically present in the U.S. for ten years betwee and that five of those years were afte when her father turned fourteen years old.

To support the claim that the applicant's met physical presence requirements set forth in section 301(a)(7) of the Act, the applicant submitted copies o paychecks, payment receipts and FICA earning statements, as well as copies of her sibling's birth and baptismal certificates, and copies of documents relating to her mother's physical presence in the U.S. and the applicant's own physical presence in the United States. The dates contained on all of the above-submitted documents relate to years that occurred after the applicant's birth in The evidence therefore fails to establish that the applicant's father was physically present in the U.S. for any time period prior to the applicant's birth. Accordingly, the AAO finds that the applicant is ineligible for derivative citizenship through her father, pursuant to section 301(a)(7) of the former Act.

Section 322 of the Act, effective prior to provided, in part, that:

(a) Application of citizen parents; requirements

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, that child was adopted by the citizen parent before the child reached the age of 16 years and the child meets the requirements for being a child under subparagraph (E) or (F) of section 101(b)(1).

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.

b) Attainment of citizenship status; receipt of certificate

Upon 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.**

(Emphasis added.) The applicant failed to establish that an N-600, Application for a Certificate of Citizenship (N-600 application) was filed on the applicant's behalf prior to her eighteenth birthday, or that an N-600 application process was completed prior to the applicant's eighteenth birthday. The applicant therefore failed to meet the requirements set forth in section 322(b) of the former Act, and she is ineligible for citizenship under section 322 of the former Act.

The AAO notes that section 322 of the Act was amended by the Child Citizenship Act of 2000, Pub.L. No. 106-395, 114 Stat. 1631 (CCA), effectiv nd provides benefits only to those persons who had not yet reached their 18th birthday. The applicant was twenty-five years old and is therefore ineligible for consideration under section 322 of the Act. (BIA 2001).

Section 320 of the Act, as amended on 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.

Because the applicant was over the age of eighteen on she is not eligible for the benefits of section 320 of the amended Act.

The AAO additionally notes that the applicant does not qualify for citizenship pursuant to section 320 of the former Act. Former section 320 of the 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.

The record reflects that the applicant's mother is not a U.S. citizen. The applicant therefore does not qualify for consideration under section 320 of the former Act.

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. In this case, the burden has not been met. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.