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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: HOUSTON Date: JAN 13 2004

IN RE: APPLICANT: [redacted]

APPLICATION: Application for Certificate of Citizenship under section 301(a)(7) of the former Immigration and Nationality Act, 8 U.S.C. §1401(a)(7) and section 320 of the former Immigration and Nationality Act; 8 U.S.C. § 1431

ON BEHALF OF PETITIONER:

[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 the Interim District Director, Houston, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born on June 22, 1972 in Matamoros, Tamaulipas, Mexico. The record indicates that the applicant's mother was born in Valle Hermoso, Tamaulipas, Mexico on August 28, 1950. She acquired United States (U.S.) citizenship at birth through her U.S. citizen father and was issued a certificate of citizenship on September 29, 1969. The applicant's father, was born in on October 2, 1947. He is not a U.S. citizen. The applicant's parents married on April 30, 1971 in Valle Hermoso, Tamaulipas, Mexico. The record indicates that the applicant was admitted to the United States as a permanent resident on August 5, 1972. He was placed in deportation proceedings, and on March 29, 1993 he was ordered deported from the United States and lost his permanent resident status on that date The applicant seeks a certificate of citizenship under section 320 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1431, based on the claim that he derived U.S. citizenship through his mother.

The interim district director determined that the evidence in the record failed to establish that the applicant's U.S. citizen mother had resided in the United States or its outlying possessions for a period of 10 years prior to the applicant's birth, at least 5 years of which were after his mother reached the age of 14, and, therefore, he did not derive citizenship at birth.[1] As the applicant provided documentation on his U.S. citizen grandfather's residence in the United States, the interim district director also examined the application under section 322(a) of the Act, but determined that since the applicant had reached the age of 18 prior to enactment of the Child Citizenship Act of 2000 (CCA) he was not eligible for benefits under section 322(a) of the Act.[2] The application was denied accordingly.

On appeal, counsel states that the Service (now Citizenship and Immigration Services, "CIS") erroneously applied the current law regarding automatic citizenship. He asserts that the Service needs to apply the law as it existed at the time of the applicant's birth and that under that law the applicant acquired derivative citizenship through his U.S. citizen mother. In his brief he cites section 320(a) of the Act as the relevant section of law and states that at the time of the applicant's birth section 320(a) provided that:

> A child born outside of the U.S. may automatically become a citizen of the United States upon fulfillment of the following conditions:
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> (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
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> (2) The child is under the age of eighteen years.

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[1] The AAO notes that though the interim district director referred to section 301(g) of the Act in his decision, the criteria used in denying the application was that of section 301(a)(7) of the former Act which is the correct section of law to consider in this application. The AAO finds no harm in this error.

[2] The interim district director was correct in stating that the applicant was ineligible for benefits under the CAA, however, a version of section 322 did exist prior to enactment of the CAA. Under that version of section 322, as with the current version, the applicant must be under the age of 18 years at the time of the application. There is no indication that any application was filed prior to the applicant turning 18 years of age, so he is not eligible for benefits under section 322 of the former Act.

> (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.

In the sense that CIS needs to apply the law as it existed at the time of the applicant's birth, counsel is correct. "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 (9th Cir., 2000) (citations omitted). However, the section of law that counsel cited as applying to the applicant is, in fact, the current section 320 (a), not section 320(a) as it existed at the time of the applicant's birth.

Section 320 of the former Act in effect at the time of the applicant's birth 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 alien 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.

Section 320 of the former Act required that in addition to having a U.S. citizen parent, the child's alien parent must naturalize prior to the child reaching the age of 18 years. This requirement was eliminated under the CAA, but, as previously noted, the applicant is not eligible for consideration under the CAA. Though his mother is a U.S. citizen, there is no indication that his father ever became a U.S. citizen. The applicant, therefore, does not qualify for consideration under section 320 of the former Act.

The applicant's ineligibility under section 301(a)(7) of the Act was thoroughly discussed in the interim district director's decision and will not be repeated here. There is no indication that the applicant's mother resided in the United States for a period of 10 years prior to the applicant's birth, at least 5 of which were after she reached the age of 14, as required by section 301(a)(7) of the Act in effect at the time of the applicant's birth.

"When there is a claim of citizenship . . . one born abroad is presumed to be an alien and must go forward with evidence to establish his claim to United States citizenship." *Matter of Tijerina-Villarreal,* 13 I&N Dec. 327, 330 (BIA 1969). The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. *See also* § 341 of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1452. In the present application, the applicant has not proven his eligibility for derivative citizenship under any section of law. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.