U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

JUN 29 2004

FILE: [redacted] Office: NEW YORK, NY Date:

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship pursuant to Section 320 of the Immigration and Nationality Act, 8 U.S.C. § 1431 and Section 322 of the former 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, Director
Administrative Appeals Office

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

The record reflects that the applicant was born on The applicant's was born in Ecuador on and she became a naturalized U.S. citizen when the applicant was fourteen years old. The applicant's father was born in Ecuador and he is not a U.S. citizen. The applicant's parents were married in Ecuador on The applicant seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431 and section 322 of the former Immigration and Nationality Act (former Act), 8 U.S.C. § 1433.

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 when the amended provision took effect. The district director concluded further that the applicant was ineligible for citizenship under section 322 of the former Act, because her U.S. citizen parent did not file an application for citizenship on the applicant's behalf prior to the applicant's eighteenth birthday. The application was denied accordingly.

On appeal, the applicant asserts that her mother became a naturalized U.S. citizen in 1997, while the applicant was under the age of eighteen, and that she met the requirements for citizenship at the time of her mother's naturalization. The applicant asserts that Immigration and Naturalization Service (Service, now Citizenship and Immigration Services, CIS) backlogs caused a delay in the processing of her citizenship application and that she should not be penalized for the processing delays of the Service (CIS).

The AAO notes that the requirements for citizenship set forth in the Immigration and Nationality Act are statutorily mandated, and that an applicant is required to meet the statutory provisions in order to obtain U.S. citizenship under the Act. The AAO therefore finds that the applicant must satisfy the provisions for citizenship as set forth in section 320 of the Act and section 322 of the former Act, and that her eligibility for citizenship under these provisions is not affected or changed by Service (CIS) processing delays.

Section 320 of the former Immigration and Nationality Act (former Act) was amended by the Child Citizenship Act of 2000 (CCA), which took effect on Section 320 of the Act, as amended, 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.

Legal precedent decisions have made clear that the provisions of the CCA are not retroactive and that the amended provisions of section 320 of the Act apply only to persons who were not yet eighteen years old as of Because the applicant was over the age of eighteen on he is not eligible for the benefits of section 320 of the amended Act. *See Matter of Rodriguez-Tejedor,* 23 I&N Dec. 153 (BIA 2001).

The AAO additionally notes that the applicant does not qualify for citizenship pursuant to section 320 of the former Act, 8 U.S.C. § 1431. 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 father is not a naturalized U.S. citizen. The applicant is therefore not entitled to citizenship under section 320 of the former Act.

Section 322 of the former Act stated, in pertinent part:

> (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.
> >
> > . . . .
> >
> > 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.

The applicant failed to establish that her mother filed an N-600, Application for a Certificate of Citizenship (N-600 application) 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 establish that she qualifies for citizenship under section 322 of the former Act.

The AAO notes further that former section 321 of the 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.

The applicant failed to establish that her father is a naturalized U.S. citizen. Moreover, the record fails to demonstrate that the applicant's parents obtained a legal separation or divorce prior to the applicant's eighteenth birthday. The applicant therefore does not qualify for consideration under former section 321 of the 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.[1]

ORDER: The appeal is dismissed.

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[1] The AAO notes that the present decision is without prejudice to the applicant's filing an N-400, Application for Naturalization pursuant to section 316 of the Act, 8 U.S.C. § 1427.