U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: HARLINGEN, TEXAS Date: OCT 25 2004

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under sections 301(g) and 320 of the Immigration and Nationality Act, 8 U.S.C. §§ 1401(g) and 1431.

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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

DISCUSSION: The application was denied by the District Director, Harlingen, Texas, 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 September 2, 1987, in Mexico. The applicant's mother, Lidia Hernandez, was born in Mexico on November 20, 1967, and she derived U.S. citizenship at birth. The applicant's father was born in Mexico and is not a U.S. citizen. The applicant's parents married in Mexico on May 9, 1997. The record reflects that the applicant entered the United States in August 1996 without a lawful admission. The applicant presently seeks a certificate of citizenship pursuant to sections 301 and 320 of the Immigration and Nationality Act (the Act); 8 U.S.C. §§ 1401 and 1431, based on the claim that he is entitled to U.S. citizenship through his mother.

The district director concluded the applicant had failed to establish that he made a legal entry into the United States or that his U.S. citizen mother was physically present in the U.S. for the requisite time period set forth under the Act. The application was denied accordingly.[1]

---

[1] The AAO notes that the district director erroneously adjudicated the applicant's citizenship claim pursuant to section 322 of the Act, 8 U.S.C. § 1433. Section 322 of the Act applies to a child born and residing outside of the United States, and 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;
> >
> > . . .
> >
> > (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.

The record in the present case reflects that the applicant and his mother have resided in the United States since August 1996. *See* Form N-600, Application for Certificate of Citizenship (N-600 Application). The applicant therefore does

On appeal, the applicant asserts that his mother obtained her certificate of citizenship six years ago and that he is therefore entitled to U.S. citizenship. The applicant provides no other information and he makes no other assertions on appeal.

"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). The applicant was born in Mexico in September 1987. In order to establish that he derived U.S. citizenship at birth, the applicant must establish that his mother satisfies the requirements set forth in section 301(g) of the Act, as in effect at the time of his birth.

Section 301(g) of the Act, 8 U.S.C. § 1401, states in pertinent part, that the following shall be nationals and citizens of the United States at birth:

> (g) a person born outside the geographical limits of the United States 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 five years, at least two of which were after attaining the age of fourteen years . . . .

In *Matter of V,* 9 I&N Dec. 558, 560 (BIA 1962), the Board of Immigration Appeals determined that the term "physical presence" meant "continuous physical presence" or "residence" in the United States. In order to meet the physical presence requirements as set forth in section 301(g) of the Act, the applicant must establish that his mother was physically present in the U.S. for five years between November 20, 1967 and September 2, 1987, and that two of the years occurred after November 20, 1981, when his mother turned fourteen.

The applicant submitted no evidence to establish or indicate that his mother was physically present in the United States during the requisite period described above. Moreover, the AAO notes that the applicant's N-600 application states that Ms. Hernandez resided in Mexico until approximately February 1996. The applicant therefore failed to establish that he qualifies for derivative citizenship under section 301(g) of the Act.

Section 320 of the Act applies to a child born outside of the United States, but residing in the U.S., and provides in pertinent part that:

> (a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:
>
> (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.

---

not qualify for consideration under section 322 of the Act. The AAO finds the above error to be harmless, however, as the applicant has failed to establish that he qualifies for citizenship under any other provision contained in the 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.

The record reflects that the applicant was not admitted into the U.S. pursuant to a lawful admission for permanent residence. The applicant has therefore failed to establish that he meets the requirements for automatic citizenship as set forth in section 320 of the Act.

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. The applicant has not met his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.