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FILE:  Office: EL PASO, TEXAS

Date: **AUG 18 2005**

IN RE: Applicant 

APPLICATION: Application for Certificate of Citizenship pursuant to former § 322 of the Immigration and Nationality Act; 8 U.S.C. § 1433

ON BEHALF OF APPLICANT:



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, El Paso, 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 March 24, 1969 in Mexico to non-U.S. citizen parents. The applicant was adopted in 1986 by his adoptive father (father), who is a native-born U.S. citizen, and his adoptive mother (mother), who became a naturalized U.S. citizen in 1999. The applicant was admitted into the United States for lawful permanent residence on February 5, 1992. The applicant seeks a certificate of citizenship based on his adoptive father's U.S. citizenship. The district director concluded that the applicant was statutorily ineligible for a certificate of citizenship under § 320 of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1431, because he was over sixteen years of age at the time of his adoption. The district director also determined that the applicant was over eighteen years of age at the time he was admitted for lawful permanent residence. Hence, the district director denied the application.

On appeal, counsel asserts that the applicant was adopted in Mexico on January 15, 1980, when he was ten years old. Counsel also contends that the applicant resided in the United States for many years prior to 1986. In support of these contentions, counsel submits an affidavit executed by the applicant's natural father on February 18, 2005. The record contains no court documents or any other evidence in support of the claim that the applicant was adopted in 1980.

Former §§ 320 and 322 of the Act were amended by the Child Citizenship Act of 2000 (CCA), which took effect on February 27, 2001, and former § 321 of the Act, 8 U.S.C. § 1432, was repealed. The district director incorrectly analyzed the instant case pursuant to the current, amended version of § 320 of the Act. Legal precedent decisions have clearly stated that the provisions of the CCA are not retroactive and that the amended provisions of the Act apply only to persons who were not yet eighteen years old as of February 27, 2001. Because the applicant was over the age of eighteen on February 27, 2001, the AAO finds that he is not eligible for the benefits of the amended sections of the Act. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Rather, provisions of the Act prior to amendment apply to the applicant's case.

The applicant does not qualify for citizenship pursuant to former § 320 of the Act, 8 U.S.C. § 1431. Former § 320 of the Act provides 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 does not establish that either of the applicant's natural parents was a U.S. citizen at the time of his birth. The applicant therefore does not qualify for U.S. citizenship under § 320 of the former Act.

The applicant also fails to qualify for U.S. citizenship under former § 322 of the Act. Former § 322 of the Act, 8 U.S.C. § 1433, provides, in pertinent part, that:

(a) 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.

....

(b) Upon approval of the application . . . [and] upon taking and subscribing before an officer of the Service 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.

Former § 322(b) of the Act requires that an applicant establish that Citizenship and Immigration Service (CIS) approved his or her application for citizenship prior to the applicant's eighteenth birthday, and that the applicant took an oath of allegiance prior to turning eighteen. The applicant does not meet the requirements set forth in former § 322(b) of the Act, because CIS did not approve his certificate of citizenship application, nor did he take an oath of allegiance, prior to his eighteenth birthday.

Former § 321 (repealed) of the Act, 8 U.S.C. § 1432, provides, 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.

This section does not apply to adopted children of U.S. citizen parents.

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 established his eligibility for a certificate of citizenship under any provision of the Act; therefore, the appeal will be dismissed.

ORDER: The appeal is dismissed.