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U.S. Citizenship  
and Immigration  
Services

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EA

[Redacted]

FILE:

[Redacted]

Office: HOUSTON, TEXAS

Date:

JUN 18 2015

IN RE:

Applicant:

[Redacted]

APPLICATION:

Application for Certificate of Citizenship under Section 322 of the Immigration and Nationality Act; 8 U.S.C. § 1433.

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.

*For*  
  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Houston, 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 April 11, 1986, in Mexico. The applicant's father, [REDACTED] was born in Maine on January 25, 1955, and he is a United States citizen. The applicant's mother, [REDACTED] was born in Mexico and she is not a U.S. citizen. The applicant's parents married in Mexico on May 30, 1981. The applicant seeks a certificate of citizenship pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The district director determined that the applicant was ineligible for U.S. citizenship under section 322 of the Act because she had failed to submit documentation in a timely manner establishing that she met the definition of "child" as set forth in the Act.<sup>1</sup> The district director determined that the applicant turned eighteen prior to taking the prescribed oath of allegiance, and the application was denied accordingly.

The applicant asserts on appeal that she mailed her parent's marriage certificate to the Houston District Office on or about March 25, 2004, approximately two weeks prior to her eighteenth birthday. The applicant asserts that the marriage certificate established that she met the definition of "child" as set forth in the Act. The applicant indicates further she is entitled to citizenship under section 322 of the Act and that she should not be penalized for district office processing delays.

The AAO finds that its appellate jurisdiction is limited, and that the AAO has no jurisdiction over unreasonable delay claims arising under the Act or pursuant to constitutional due process claims. *See generally*, 8 C.F.R. § 103.1(f)(3)(iii) (2003) and 8 C.F.R. § 2.1 (2004). *See also, Fraga v. Smith*, 607 F.Supp. 517 (U.S. Dist.Ct. Or. 1985) (Discussing federal court jurisdiction over such claims).

The AAO finds further that the requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and that U.S. Citizenship and Immigration Services (CIS) lacks statutory authority to issue a certificate of citizenship if an applicant fails to meet the relevant statutory provisions set forth in the Act. *See Iddir v. INS*, 301 F.3d 492 (7<sup>th</sup> Cir. 2002). Accordingly, the AAO finds that the applicant's eligibility for citizenship under section 322 provisions is not affected or changed by CIS (district office) processing delays, and that in order to obtain a certificate of citizenship, the applicant must establish that she fully meets section 322 of the Act requirements.

Section 322 of the Act 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

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<sup>1</sup> Section 101(c) of the Act, 8 U.S.C. § 1101(c) provides that:

(1) The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere, and, except as otherwise provided in sections 320, and 321 of title III, a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of 16 years (except to the extent that the child is described in subparagraph (E)(ii) or (F)(ii) of subsection (b)(1)), and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

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; or

(B) has . . . a citizen parent who 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.

(b) Upon approval of the application (which may be filed from abroad) and . . . upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this Act 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 record reflects that the applicant turned eighteen on April 11, 2004, prior to CIS adjudication or approval of her citizenship application. The applicant therefore does not meet the statutory requirements for citizenship as set forth in section 322 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 her burden in the present matter and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.