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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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FILE: [REDACTED]

Office: SACRAMENTO, CA

Date:

OCT 09 2008

IN RE:

Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act; 8 U.S.C. §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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Sacramento, California, 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 6, 2001 in Mexico. The applicant's parents are [REDACTED] and [REDACTED]. The applicant's mother became a U.S. citizen upon her naturalization on August 24, 2007. The applicant seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, based on the claim that she acquired U.S. citizenship upon her mother's naturalization.

The field office director concluded, in relevant part, that the applicant did not automatically acquire U.S. citizenship because she had not been admitted to the United States as a lawful permanent resident. The application was denied accordingly.

On appeal, the applicant, through her mother, states that she is eligible for citizenship because she holds a B-2 Visitor's Visa. She also notes that the applicant is the beneficiary of a pending Form I-130, Petition for Alien Relative, filed on her behalf in February 2006.

Section 320 of the Act was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The applicant was born on March 6, 2001. She therefore meets the age requirement for benefits under the CCA.

Section 320 of the Act, 8 U.S.C. § 1431, states 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.
 - (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 has not been admitted to the United States as a lawful permanent resident.¹ As such, she did not automatically acquire U.S. citizenship upon her mother's naturalization in 2007 pursuant to section 320 of the Act, 8 U.S.C. § 1431.

The AAO notes that the applicant is likewise ineligible for citizenship under section 322 of the Act, 8 U.S.C. § 1433. Section 322 of the Act applies to children born and residing outside of the United States, and provides that:

¹ The AAO notes that the applicant may acquire U.S. citizenship should she be admitted to the United States as an immigrant or adjust her status to lawful permanent resident prior to her 18th birthday.

(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 shall issue a certificate of citizenship to such applicant upon proof, to the satisfaction of the Attorney General, 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 [citizen parent] (or, if the citizen parent is deceased, an individual who does not object to the application).

(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, except as provided in the last sentence of section 337(a), 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 with a certificate of citizenship.

In order to satisfy the requirements of section 322(a)(4) of the Act, the applicant must establish that she resides *outside of the United States in the legal and physical custody of her U.S. citizen parent*. The AAO notes that by the applicant's own statements in the Form N-600, Application for Certificate of Citizenship, and the documents submitted in support of the application, she is not residing with her mother abroad. The record clearly indicates that the applicant's mother resides in California, and that the applicant resides in Mexico. The AAO must therefore conclude that the applicant cannot establish eligibility for citizenship under section 322(a)(2)(4) of the Act because she is not residing outside the United States in the custody of her U.S. citizen parent.

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. The applicant in the present case has not met her burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.