

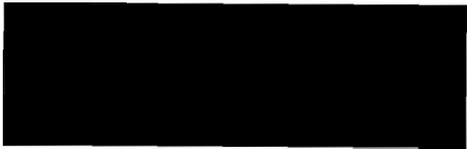


U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

PUBLIC COPY

E<sub>2</sub>



FILE: Office: OKLAHOMA CITY, OK Date: AUG 04 2009

IN RE: 

APPLICATION: Application for Certificate of Citizenship under Section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401.

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Oklahoma City, Oklahoma, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Mexico on August 18, 1984. The applicant's father, [REDACTED] became a U.S. citizen when he naturalized on September 28, 2006, when the applicant was 22 years old. The applicant claims her mother acquired U.S. citizenship at birth. The applicant's parents were married in 1979 in Mexico. The applicant resides in the United States, but is not a lawful permanent resident. The applicant seeks a Certificate of Citizenship claiming that she derived U.S. citizenship through her mother and maternal grandparents.

The field office director determined that the applicant had failed to establish that she acquired U.S. citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, because she was not a lawful permanent resident and because she was over 18 when her father naturalized. He further determined that the applicant did not acquire U.S. citizenship at birth through her mother because her mother is not a U.S. citizen. The application was accordingly denied.

On appeal, the applicant maintains that she acquired U.S. citizenship through her mother and maternal grandparents. The applicant submits a copy of her grandfather's birth, baptismal and school records. The applicant concedes that she cannot obtain U.S. citizenship through her father. *See* Statement of the Applicant attached to Form I-290B, Notice of Appeal to AAO.

At the outset, the AAO notes that the applicant's first Application for a Certificate of Citizenship was denied in 2003 based on the applicant's failure to establish that her mother had the required physical presence in the United States. The applicant's instant application must be rejected pursuant to 8 C.F.R. § 341.6, which states that "[a]fter an application for a Certificate of Citizenship has been denied and the appeal time has run, a second application submitted by the same individual shall be rejected and the applicant instructed to submit a motion for reopening or reconsideration . . . ." The applicant has not provided any additional evidence or argument that would warrant reopening or reconsideration of the previous decision in this case.

"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 (9<sup>th</sup> Cir. 2000) (citations omitted). The applicant was born on 1984. Section 301(g) of the Act, 8 U.S.C. § 1401(g), applies to her case.<sup>1</sup>

Section 301(g) of the Act, 8 U.S.C. § 1401(g), provides, in relevant part,

[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

---

<sup>1</sup> The AAO notes that the director erroneously cited to section 301(e) of the Act, 8 U.S.C. § 1403(e), which governs acquisition of U.S. citizenship through a parent born in an outlying possession 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 . . .

There is no evidence in the record, in either of the applicant's administrative files, to establish that the applicant's mother was physically present in the United States for five years prior to 1984, two of which while over the age of 14. The AAO notes, for instance, that the applicant's father's sworn statement indicates that he and the applicant's mother resided in the United States from 1974 to 1978, and then not again until 1988. Moreover, the AAO notes that the applicant's mother's Certificate of Citizenship was cancelled. The AAO further notes that the applicant's grandfather's birth certificate was deemed fraudulent, and that neither he nor the applicant's mother has a valid claim to U.S. citizenship.

The AAO finally notes that sections 320 and 322 of the Act, as amended by the Child Citizenship Act of 2000 (CCA), took effect on February 27, 2001, and pertain to individuals such as the applicant who were under 18 on February 27, 2001. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Nevertheless, the applicant did not acquire U.S. citizenship under either section 320 or section 322 of the Act, as amended. With respect to section 320 of the Act, the AAO notes that the applicant fails to fulfill the lawful permanent resident requirement and that her father naturalized after her 18<sup>th</sup> birthday. With respect to section 322 of the Act, the AAO notes that the applicant is not residing outside the United States and that she is over the age of 18. The AAO finds that the applicant is ineligible for a Certificate of Citizenship under any provision of the Act.

The AAO notes "[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." *Fedorenko v United States*, 449 U.S. 490, 506 (1981). 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 order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is "probably true" or "more likely than not." *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). The applicant has not met her burden of proof and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.