



U.S. Citizenship
and Immigration
Services

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FILE:

Office: IRVING, TX

Date:

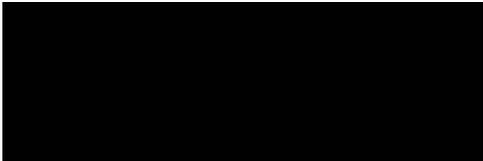
DEC 08 2009

IN RE:



APPLICATION: Application for Certificate of Citizenship under Sections 301 and 320 of the Immigration and Nationality Act; 8 U.S.C. §§ 1401 and 1431.

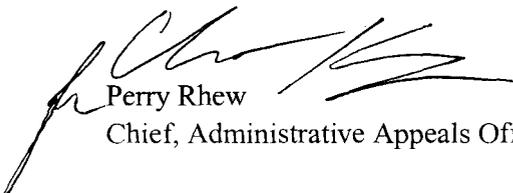
ON BEHALF OF APPLICANT:



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.

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).


Perry Rhew
Chief, Administrative Appeals Office

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

The record reflects that the applicant was born on May 15, 1970 in Mexico. The applicant's parents, as listed on his birth certificate, are [REDACTED] and [REDACTED]. The applicant's mother was a native-born U.S. citizen, born on December 30, 1950 in Texas. The applicant's mother died shortly after his birth. The applicant was adopted by his maternal grandparents in 1976, and, upon the approval of a petition filed by his adoptive parents, he was admitted to the United States as a lawful permanent resident in 1979. 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 (1970).

The field office director concluded that the applicant did not acquire U.S. citizenship pursuant to section 320 of the former Act, 8 U.S.C. § 1431 (1970), because his parents were native-born U.S. citizens and the cited provision allowed only for derivation of U.S. citizenship upon the naturalization of a parent. The director also concluded that the applicant did not acquire U.S. citizenship at birth under section 301 of the former Act, 8 U.S.C. § 1401 (1970), because the applicant failed to establish that his mother was physically present in the United States for 10 years, five of which while over the age of 14.

On appeal, the applicant, through counsel, maintains that Congress intended to extend citizenship benefits to him as the adoptive child of U.S. citizens. See Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO. The AAO notes that counsel indicates that a brief or additional evidence would be submitted within 30 days of filing the appeal. To date, no such evidence or brief has been received by this office.

The AAO notes that "[t]he 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 1970. Sections 301 and 320 of the former Act, 8 U.S.C. §§ 1401 and 1431 (1970), are therefore applicable to this case.¹

Section 301(a)(7) of the Act, 8 U.S.C. § 1401, as in effect in 1970, provided that the following shall be nationals and citizens of the United States at birth:

¹ Section 301(a)(7) of the former Act was re-designated as section 301(g) upon enactment of the Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046. The substantive requirements of this provision remained the same until the enactment of the Act of November 14, 1986, Pub. L. 99-653, 100 Stat. 3655.

Section 320 of the Act was amended by the Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), and took effect on February 27, 2001. The CCA benefits all persons who had not yet reached their 18th birthdays as of February 27, 2001. Because the applicant was over the age of 18 years on February 27, 2001, he does not meet the age requirement for benefits under the CCA.

[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 ten years, at least five of which were after attaining the age of fourteen years: *Provided*, That any periods of honorable service in the Armed Forces of the United States by such citizen parent may be included in computing the physical presence requirements of this paragraph.

Section 320(a) of the former Act, 8 U.S.C. § 1431 (1970), stated, in pertinent part, that:

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 alien parent is naturalized, become a citizen of the United States. . .

The AAO finds that the applicant cannot establish eligibility for U.S. citizenship under either provision. With respect to section 320 of the former Act, the AAO concludes that the applicant did not acquire U.S. citizenship because neither his biological mother, nor his adoptive parents, was a naturalized U.S. citizen. Section 320 of the former Act, as noted above, provides for acquisition of U.S. citizenship only upon the naturalization of the applicant's parent.

The AAO further finds that the record does not establish that the applicant's biological mother was physically present in the United States for the required 10 years prior to the applicant's birth (in 1970), five of which while over the age of 14 (after 1964). As noted by the field office director, there is a document in the record, dated in 1972, which states that the applicant's mother's was raised in Mexico by her uncle. *See* 1972 Letter from State of New Mexico Health and Social Services. The document further states that that applicant's mother was first married in Mexico in 1967. *Id.* There is no indication in the record that the applicant's biological mother was physically present in the United States prior to the applicant's birth, other than at her own birth in 1950 and in 1969 (when she registered her marriage to the applicant's father in New Mexico).

The applicant claims that it was Congress' intent to allow individuals such as himself to derive U.S. citizenship. *See* Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO. The AAO notes that the requirements for citizenship are specifically set forth in the Act, and that U.S. Citizenship and Immigration Services (USCIS) lacks statutory authority to issue a certificate of citizenship when an applicant fails to meet the relevant statutory provisions set forth in the Act. A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 885 (1988); *see also United States v. Manzi*, 276 U.S. 463, 467 (1928) (stating that "citizenship is a high privilege, and when doubts exist concerning a grant of it ... they should be resolved in favor of the United States and against the claimant"). Moreover, "it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect." *Berenyi v. District Director, INS*, 385 U.S. 630, 637 (1967).

Pursuant to 8 C.F.R. § 341.2(c), 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 failed to establish that his biological mother was physically present in the United States as required by section 301 of the former Act. Further, he is statutorily ineligible for citizenship under section 320 of the former Act because his parents did not naturalize. The applicant therefore has failed to meet his burden of proof, and his appeal will be dismissed.

ORDER: The appeal is dismissed.