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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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**U.S. Citizenship  
and Immigration  
Services**

E-2

FILE:

Office: SAN ANTONIO, TX

Date: JUN 02 2009

IN RE:

Applicant:

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

John F. Grissom, Acting Chief  
Administrative Appeals Office

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

The record reflects that the applicant was born on February 11, 1986 in Mexico. The applicant's parents, as reflected in his birth certificate, are [REDACTED] and [REDACTED]. [REDACTED] is not the applicant's biological father. [REDACTED], however, acknowledged the applicant in 1993 in accordance with the laws of the State of Tamaulipas, Mexico. He and the applicant's mother were married in 2001. The applicant was admitted to the United States as a lawful permanent resident in 2003. [REDACTED] is a native-born U.S. citizen. The applicant seeks a certificate of citizenship pursuant to section 320 of the Immigration and Naturalization Act (the Act), 8 U.S.C. § 1431, claiming that he acquired U.S. citizenship through his step-father's U.S. citizenship.

The district director denied the applicant's citizenship claim because U.S. citizenship may not be acquired or derived from a non-adoptive, step-parent. The application was denied accordingly. On appeal, the applicant maintains that he was recognized by his step-father in accordance with the laws of the State of Tamaulipas, Mexico and is therefore to be considered to be his child for citizenship purposes.

Section 320 of the Act, 8 U.S.C. § 1431, was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA benefits all persons who have not yet reached their eighteenth birthday as of February 27, 2001. Because the applicant was under the age of 18 on February 27, 2001, he 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.
  
- (b) Subsection (a) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

The record in this case contains a sworn statement by the applicant's step-father admitting that he is not the applicant's biological father. The record also contains a sworn statement by the applicant's

mother indicating that the applicant's step-father is not his biological father. The applicant's mother further indicates that the applicant's biological father is [REDACTED] a Mexican national. The AAO further notes that the applicant's mother was not married to his step-father at the time of the applicant's birth. The record thus conclusively establishes that the applicant's step-father is not the applicant's biological father.

The definition of "child" applicable to the citizenship and nationality provisions in Title III of the Act is contained in section 101(c) of the Act, 8 U.S.C. § 1101(c), and provides as follows:

...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 section 320 and 321 of the 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 . . . and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.

In contrast to Section 101(b) of the Act, 8 U.S.C. § 1101(b), the definition of "child" for Title III purposes does not include a "step-child."

In *Matter of Guzman-Gomez*, 24 I&N Dec. 824 (BIA 2009), the Board of Immigration Appeals unequivocally determined that U.S. citizenship cannot not be acquired pursuant to section 320(a) of the Act, 8 U.S.C. § 1431(a), through a non-adoptive, step-parent.

Although the applicant's step-father "recognized" the applicant pursuant to the laws of the State of Tamaulipas, Mexico, there is no evidence in the record suggesting that the applicant's step-father legally adopted the applicant or that the applicant otherwise satisfies the requirements of section 101(b)(1) of the Act, 8 U.S.C. § 1101(b)(1). The applicant therefore also did not acquire U.S. citizenship pursuant to section 320(b) of the Act, 8 U.S.C. § 1431(b).

The Act does not provide for derivation or acquisition of U.S. citizenship through a step-parent. *See Matter of Guzman-Gomez, supra*. Therefore, the AAO must conclude that the applicant did not acquire U.S. citizenship under section 320 of the Act, 8 U.S.C. § 1431, or any other provision of the Act.

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 his burden and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

