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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090

U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: EL PASO, TX

Date:

NOV 25 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:

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).

Perry Rhew  
Chief, Administrative Appeals Office

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

The applicant, born in Mexico, claims that he acquired U.S. citizenship through his adoptive mother, a naturalized U.S. citizen. The field office director determined that the applicant failed to submit a final adoption decree and evidence that he was admitted to the United States as a lawful permanent resident, as required for the acquisition of citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431. The director denied the application accordingly.

On appeal, the applicant's mother submits a final adoption order, but fails to show that the applicant was lawfully admitted to the United States as a permanent resident.

Section 320 of the Act, 8 U.S.C. § 1431, states:

(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).

Section 101(b)(1) of the Act, 8 U.S.C. § 1101(b)(1), defines a child, in pertinent part, as:

an unmarried person under twenty-one years of age who is –

\* \* \*

(E)(i) a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years . . . .

The regulation at 8 C.F.R. § 320.1 further prescribes, in pertinent part, that “[a]dopted means adopted pursuant to a full, final and complete adoption.”

The record in this case provides the following, relevant facts. The applicant's adoptive mother was naturalized on March 27, 1996. The applicant was born on June 11, 1997 in Mexico and began

residing with his adoptive mother in Texas that same year.<sup>1</sup> On November 4, 2005, the El Paso County, Texas District Court granted a full and final adoption of the applicant to his adoptive mother.

The applicant was adopted at the age of eight and has now resided in the legal and physical custody of his adoptive mother for over two years.<sup>2</sup> The adoption order submitted on appeal meets the requirement of section 320(b) of the Act and the applicant has overcome the portion of the director's decision to the contrary.

The applicant has not, however, demonstrated that the applicant was admitted to the United States as a lawful permanent resident, as required by section 320(a)(3) of the Act. As noted by the director, the applicant's adoptive mother stated at their interview on October 23, 2007 that the applicant had not been admitted as a lawful permanent resident. A search of relevant U.S. Citizenship and Immigration Services (USCIS) records also failed to show that the applicant is a lawful permanent resident.

To acquire citizenship through his adoptive mother, the applicant must meet all the requirements of section 320 of the Act. Because he has not shown that he was lawfully admitted for permanent residence, he has not met section 320(a)(3) of the Act.<sup>3</sup>

In certificate of citizenship proceedings, the claimant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. *See* 8 C.F.R. § 341.2(c). The applicant in the present case has not met his burden. Consequently, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

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<sup>1</sup> *Form N600K, Application for Citizenship; Order Terminating Parental Rights and Granting Adoption of Child*, El Paso County, Texas District Court, [REDACTED] (Nov. 4, 2005) (finding a "constructive adoption since December 1997").

<sup>2</sup> Although the record does not show that the applicant's adoptive mother had legal custody of him prior to the adoption order, the two-year residence requirement set forth in section 101(b)(1)(E) of the Act may be satisfied either before or after an adoption. *See Matter of Repuyan*, 19 I&N Dec. 119, 120 (BIA 1984).

<sup>3</sup> We note that the applicant is currently 12 years old. If his adoptive mother files an alien relative petition on his behalf and he is able to obtain lawful permanent residency before he turns 18, he may then be eligible to acquire citizenship under section 320 of the Act.