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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[redacted]

FILE: Office: HARLINGEN, TX Date: OCT 20 2009

IN RE: [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:

[redacted]

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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Harlingen, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded to the director for action consistent with this decision.

The record reflects that the applicant was born on October 19, 1987 in Mexico. The applicant's parents are [redacted] and [redacted] The applicant's parents were married in 1992. The applicant claims that his father was born in the United States in 1966. The applicant adjusted his status to that of lawful permanent resident of the United States on March 28, 2005, when he was 17 years old. 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 he acquired U.S. citizenship through his father upon his admission to the United States as a lawful permanent resident.

The field office director concluded that the applicant did not acquire U.S. citizenship upon finding that his father was not born in the United States as claimed. The application was accordingly denied.

On appeal, the applicant, through counsel, claims that his father was indeed born in the United States. Counsel maintains that the applicant's father's Mexican birth certificate was found prior to the applicant being granted lawful permanent resident status, and that the applicant's father holds a U.S. passport. *See* Applicant's Appeal Brief.

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 under 18 years old 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.

The applicant must establish, at the outset, that his father is a U.S. citizen. The applicant must also establish that he is residing in the United States "pursuant to a lawful admission for permanent

residence." The phrase "lawfully admitted for permanent residence" is defined in section 101(a)(20) of the Act, 8 U.S.C. § 1101(a)(20), as "the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed." The statute requires that the applicant establish that he was granted permanent resident status in accordance with the immigration laws, and not by mistake, fraud, or otherwise not in compliance with the law. *Matter of Koloamatangi*, 23 I & N Dec 548, 550 (2003) (holding that "the term 'lawfully admitted for permanent residence' did not apply to aliens who had obtained their permanent residence by fraud, or had otherwise not been entitled to it"); *see also, Arellano-Garcia v. Gonzales*, 429 F.3d 1183 (8th Cir. 2005) (holding that an alien who received permanent residency status by a mistake could not be considered an alien "lawfully admitted for permanent residence"); *Lai Haw Wong v. INS*, 474 F.2d 739 (9th Cir. 1973) (same). In *Matter of Longstaff*, 716 F.2d 1439, 1441 (5th Cir. 1983), the Fifth Circuit Court of Appeals explained that "the term 'lawfully' denotes compliance with all substantive legal requirements, not mere procedural regularity." *See also Savoury v. U.S. Attorney General*, 449 F.3d 1307, 1313 (11th Cir. 2006)(noting that "[t]he adverb 'lawfully' requires more than the absence of fraud").

At issue in this case is whether the applicant can establish that his father was born in the United States. The record contains a copy of the applicant's father's U.S. passport which states that he was born in Texas on January 17, 1966. The applicant's father's U.S. passport was issued on October 22, 2007. The applicant also submitted affidavits as well as a delayed Texas birth certificate purporting to be his father's. The AAO notes further that the applicant's father's baptismal certificate was dated in 2004, and proves that his baptism was in Texas in 1968.

In *Matter of Villanueva,* 19 I&N Dec. 101 (BIA 1984), the Board of Immigration Appeals (Board) held that a valid U.S. passport is conclusive proof of U.S. citizenship. Specifically, the Board held in *Matter of Villanueva* that:

> unless void on its face, a valid United States passport issued to an individual as a citizen of the United States is not subject to collateral attack in administrative immigration proceedings but constitutes conclusive proof of such person's United States citizenship.

The record in this case, however, contains a copy of a contemporaneous, Mexican birth registration for the applicant's father.[1] A certificate of citizenship cannot be issued to the applicant where, as

[1] Counsel notes that the applicant's father's Mexican birth certificate was available for review prior to the applicant's grant of lawful permanent residence and the approval of his father's passport application. The applicant thus appears to be seeking to gain U.S. citizenship by application of the doctrine of equitable estoppel. The AAO notes first that it is without authority to apply the doctrine of equitable estoppel in this or any other case. The AAO, like the Board of Immigration Appeals, is "without authority to apply the doctrine of equitable estoppel against the Service [USCIS] so as to preclude it from undertaking a lawful course of action that it is empowered to pursue by statute and regulation."

here, there are serious discrepancies between USCIS information and passport records. The U.S. Citizenship and Immigration Services (USCIS) Adjudicator's Field Manual at § 71.1(e) instructs that

> An unexpired United States passport issued for 5 or 10 years is now considered prima facie evidence of U.S. citizenship. Because it does not provide the actual basis upon which citizenship was acquired or derived, the submission of additional documentation may be required or the passport file may be requested. If after review there are differences or discrepancies between the USCIS information and the Passport Office records which would indicate that the application should not be approved, no action should be taken until the Passport Office has an opportunity to review and decide whether to revoke the passport.

The matter must therefore be remanded to the director to request that the Passport Office review and decide whether to revoke the passport of the applicant's father. The director shall issue a new decision once the Passport Office's review is completed and, if adverse to the applicant, certify the decision to the AAO for review.

ORDER: The matter is remanded to the director for action consistent with this decision and issuance of a new decision, which, if adverse to the applicant, shall be certified to the Administrative Appeals Office for review.

Matter of Hernandez-Puente, 20 I&N Dec. 335, 338 (BIA 1991). The jurisdiction of the AAO is limited to that authority specifically granted through the regulations at Volume 8 of the Code of Federal Regulations (8 C.F.R.) section 103.1(f)(3)(iii) (as in effect on Feb. 28, 2003) and subsequent amendments.