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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
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FILE: [REDACTED] Office: HARLINGEN, TX Date: SEP 30 2009

IN RE: Applicant: [REDACTED]

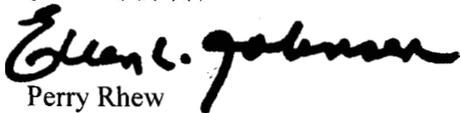
APPLICATION: Application for Certificate of Citizenship pursuant to Section 320 of the Immigration and Nationality Act, 8 U.S.C. § 1431

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).



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 appeal will be dismissed.

The record reflects that the applicant was born on November 10, 1992 in Mexico. The applicant's birth certificate lists [REDACTED] and [REDACTED] as the applicant's parents. The applicant's mother was issued a certificate of citizenship in 2004, based upon her claim that she acquired U.S. citizenship at birth through her father, [REDACTED]. According to the applicant, his maternal grandfather was born in the United States in 1926. The applicant was admitted to the United States as a lawful permanent resident in 2005. He seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his mother pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The field office director denied the applicant's claim upon finding that his maternal grandfather was born in Mexico and not the United States as claimed and determining that his mother's certificate of citizenship was issued in error.

On appeal, the applicant, through counsel, maintains that his maternal grandfather was born in the United States. *See Applicant's Appeal Brief at 3.* He further states that there "was no fraud nor any knowing misrepresentation in the application for an immigrant visa by [his mother on his behalf]." *Id.* The applicant claims that his application must be granted since there has been no effort to revoke or review his mother's citizenship. *Id.* at 4.

Section 320 of the Act, 8 U.S.C. § 1431, was amended by the Child Citizenship Act of 2000 (the CCA). The amendments took effect on February 27, 2001 and apply only to persons who were not yet 18 years old as of February 27, 2001. Because the applicant was under the age of 18 on February 27, 2001, he is eligible for the benefits of section 320 of the amended Act. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

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 mother 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 (11th Cir. 2006)(noting that “[t]he adverb ‘lawfully’ requires more than the absence of fraud”).

The AAO notes that the record contains a copy of the original entry for the birth registration of [REDACTED], the applicant’s maternal grandfather, in Villa de Burgos, Tamaulipas, Mexico, filed on September 11, 1926. The document indicates that the applicant’s grandfather was born in Mexico on September 7, 1926.

The Board of Immigration Appeals held in *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 331 (BIA 1969), that:

[W]here a claim of derivative citizenship has reasonable support, it cannot be rejected arbitrarily. However, when good reasons appear for rejecting such a claim such as the interest of witnesses and important discrepancies, then the special inquiry officer need not accept the evidence proffered by the claimant. (Citations omitted.)

The evidence provided by the applicant, such as his grandfather’s delayed Texas birth certificate, baptismal certificate, identification card, and voter registration, does not overcome his grandfather’s contemporaneous Mexican birth registration. The AAO must therefore find that the applicant’s grandfather was not born in the United States and, therefore, the applicant’s mother’s certificate of citizenship was granted in error. The applicant’s lawful permanent resident status was thus also granted in error.

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). The U.S. Supreme Court has further stated “it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect. This Court has often stated that doubts ‘should be resolved in favor of the United States and against the claimant.’” *Berenyi v. District Director*, 385 U.S. 630, 671 (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 evidence in the record does not establish that it is more likely than not that the applicant was “lawfully” admitted for permanent residence. The applicant has not established that his grandfather was born in the United States and therefore cannot establish that his mother’s certificate of citizenship was properly granted. He therefore cannot establish that his permanent resident status was granted “in accordance with all the provision of the Act.” As noted above, the applicant’s burden is to establish eligibility for citizenship by a preponderance of the evidence, and any doubts must be resolved against the applicant. The applicant in the present case has not met his burden. Therefore, the appeal will be dismissed.

ORDER: The appeal is dismissed.