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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

Ez

FILE:

Office: HARLINGEN, TX

Date: **AUG 24 2010**

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:

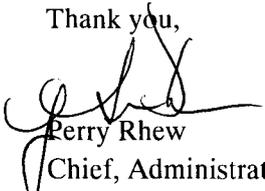
SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


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Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Harlingen, 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 June 17, 1985 in Mexico. The applicant's parents are [REDACTED]. The applicant's parents were married on January 3, 1986. The applicant's father was born in Mexico, but acquired U.S. citizenship at birth through his U.S. citizen parent. The applicant's mother is not a U.S. citizen. The applicant was admitted to the United States as a conditional permanent resident on September 9, 1997, when she was 14 years old. The applicant presently seeks a certificate of citizenship claiming that she acquired U.S. citizenship through her father.

The field office director determined that the applicant did not automatically acquire U.S. citizenship under section 320 of the Act, 8 U.S.C. § 1431, because she could not establish the required parent-child relationship. On appeal, the applicant states that she is now financially able to provide a DNA test and submits a biographical sheet relating to her paternal grandfather.

The applicable law for derivative citizenship purposes is "the law in effect at the time the critical events giving rise to eligibility occurred." See *Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005). Section 320 of the Act, as amended by the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), provides for automatic acquisition of U.S. citizenship upon the fulfillment of certain conditions prior to a child's eighteenth birthday. The CCA, which took effect on February 27, 2001, is not retroactive, and applies 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, the CCA is applicable in her case. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).¹

Section 320 of the Act, as amended, 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.

¹ The AAO notes that the applicant indicates that her father began residing in the United States in 1979. See Form N-600, Application for Certificate of Citizenship. Thus, the applicant cannot establish that her father had the required five years of physical presence in the United States to transmit U.S. citizenship to her at birth pursuant to sections 301 and 309 of the Act, 8 U.S.C. §§ 1401 and 1409.

- (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.

Section 101(c) of the Act, 8 U.S.C. § 1101(c) states, in pertinent part, that for Title III naturalization and citizenship purposes:

The term "child" means 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 . . . if such legitimation . . . takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating . . . parent or parents at the time of such legitimation

The record shows that the applicant was born out of wedlock. At the outset, the AAO must determine if the applicant was legitimated under the law of the applicant's or her father's residence or domicile. According to a 2004 Library of Congress (LOC) opinion, parentage in the State of Tamaulipas, Mexico can be established, inter alia, by acknowledgement of a child on the birth record. See LOC Opinion 2004-416. The applicant's father's name appears in her birth certificate. The AAO also notes that the applicant's parents were married in 1986. The applicant can therefore establish that she was legitimated.

The question remains, however, whether the applicant can establish that she was residing in her father's legal and physical custody prior to her eighteenth birthday (in 2003). Legal custody vests by virtue of "either a natural right or a court decree". See *Matter of Harris*, 15 I&N Dec. 39, 41 (BIA 1970). The regulations provide that legal custody will be presumed "[i]n the case of a biological child born out of wedlock who has been legitimated and currently resides with the natural parent." 8 C.F.R. § 320.1 (defining "legal custody"). The Act defines the term "residence" as "the place of general abode . . . his principal, actual dwelling place in fact, without regard to intent." Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33). There is no evidence in the record to indicate that the applicant resided with her father during the relevant time period (between her admission as a lawful permanent resident and her eighteenth birthday). To the contrary, the applicant's school records suggest that she was residing only with her mother. The applicant explains that her father was incarcerated and that her mother and grandparents were responsible for her. See Statement accompanying Form I-290B, Notice of Appeal to the AAO. The applicant therefore was not residing in the United States in the legal and physical custody of her U.S. citizen father.

"There 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 burden of proof is on the applicant to establish her claimed citizenship by a preponderance of the evidence. 8



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C.F.R. §§ 320.3(b)(1) and 341.2(c). The applicant has not met her burden of proof, and her appeal will be dismissed.

ORDER: The appeal is dismissed.