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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

[redacted]

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FILE: [redacted] Office: SAN DIEGO, CA Date: SEP 13 2010

IN RE: Applicant: [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:

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, San Diego, California, 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 January 8, 1978 in Mexico. The applicant was adopted by [redacted] native-born U.S. citizens. She was last admitted to the United States on the basis of a consular letter stating that she was a U.S. citizen. She seeks a certificate of citizenship pursuant to section 301(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(c), based on the claim that she acquired U.S. citizenship through her adopted parents.

The district director concluded that the applicant did not acquire U.S. citizenship pursuant to section 320 of the Act, 8 U.S.C. § 1431, because she had failed to establish that she was legally admitted to the United States and because she provided no evidence of her adoption. The application was accordingly denied.

On appeal, the applicant, through counsel, maintains that she acquired U.S. citizenship at birth under section 301(c) of the Act. *See* Applicant's Brief. Counsel further states that the record contains evidence of the applicant's legal admission and of her adoption. *Id.*

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 eighteenth birthdays as of February 27, 2001. Because the applicant was over the age of 18 on February 27, 2001, section 320 of the Act, as amended by the CCA, does not apply to her case.

Between October 1978 and February 27, 2001, transmittal of U.S. citizenship to adopted children was governed by former sections 320, 321 and 322 of the Act. *See* 8 U.S.C. §§ 1431, 1432, 1433 (2000). Former section 320 of the Act requires, in relevant part, that the applicant be admitted as a lawful permanent resident, former section 321 requires, in relevant part, that both parents naturalize, and former section 322 of the Act requires, in relevant part, the adjudication and approval of the application prior to the child's eighteenth birthday. The applicant cannot establish eligibility for U.S. citizenship under any of these provisions.

The AAO finds that the applicant cannot establish that she was adopted. The record does not contain an adoption certificate. The applicant's birth certificate, indicating her parents to be [redacted] and [redacted] is not an adoption certificate.[1]

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[1] The regulation, at 8 C.F.R. § 320.1, defines "adopted" as "adopted pursuant to a full, final and complete adoption." The regulations further provide that an adopted child "must meet all of the requirements in [8 C.F.R. § 320.2(a)] as well as satisfy the requirements applicable to adopted children under section 101(b)(1) of the Act."

Further, the AAO finds that the applicant has not established that she was admitted to the United States as a lawful permanent resident. The fact that the applicant was admitted pursuant to a consular letter mistakenly stating that she was a U.S. citizen is not evidence of a lawful admission for permanent resident.[2]

Lastly, the AAO finds that the applicant did not acquire U.S. citizenship at birth under section 301(c) of the Act or any other provision of law. Section 301(c) of the Act provides for U.S. citizenship at birth to "a person born outside of the United States . . . of parents both of who are citizens of the United States."[3] Like the rest of section 301 of the Act, subsection (c) does not provide for transmission of U.S. citizenship at birth to adopted children by U.S. citizens who, by definition, were not the child's parents at the time of the child's birth. The record indicates, and the applicant does not dispute, that she is not the biological child of [redacted]

"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 applicant bears the burden of proof in these proceedings to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 320.3(b). The AAO finds that the applicant has not established that she was adopted by a U.S. citizen, or that she otherwise met any of the statutory requirements of the Act for transmission of U.S. citizenship. Her appeal will therefore be dismissed.

ORDER: The appeal is dismissed.

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[2] The consular letter is also not conclusive evidence of U.S. citizenship.

[3] At the time of the applicant's birth, former section 301(a)(3) of the Act governed transmittal of U.S. citizenship by both parents. The section was re-designated as section 301(c) upon enactment of the Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046, but the substantive requirements of this provision remained the same.