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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

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U.S. Citizenship
and Immigration
Services

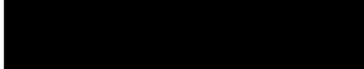


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Date: DEC 28 2011

Office: CLEVELAND, OH

FILE: 

IN RE: 

APPLICATION: Application for Certificate of Citizenship under former sections 301(g) and 321 of the Immigration and Nationality Act, 8 U.S.C. §§ 1401 and 1432

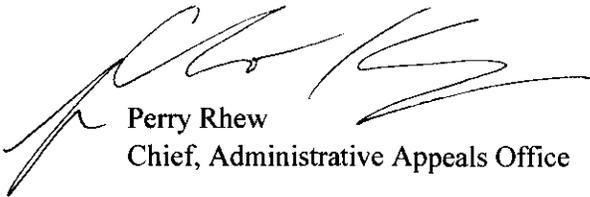
ON BEHALF OF APPLICANT: Self-represented

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 \$630. 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 for Certificate of Citizenship (Form N-600) was denied by the Field Office Director, Cleveland, Ohio, and the Administrative Appeals Office (AAO) dismissed the subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be denied. The AAO's previous order dismissing the appeal will be affirmed.

The record reflects that the applicant was born in Mexico on November 17, 1980. The applicant's parents, [REDACTED] were married on [REDACTED]. The applicant's mother is a national and citizen of Mexico who was admitted to the United States as a lawful permanent resident on September 27, 1990. The applicant was admitted to the United States as a lawful permanent resident on November 3, 1997, when he was 16 years old. The applicant's father was born in Mexico, but acquired U.S. citizenship at birth as of [REDACTED]. The applicant's mother is not a U.S. citizen by birth or naturalization. The applicant seeks a Certificate of Citizenship claiming that he derived or acquired citizenship through his father.

The field office director determined that the applicant failed to establish eligibility under former section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401, or under former sections 321 and 322 of the Act, 8 U.S.C. §§ 1432 and 1433. *See Director's Decision*, dated May 5, 2011. The director noted that the applicant's father's residence in the United States began in 1973, and therefore the applicant's father did not meet the physical presence requirements under section 301 of the Act because he was not physically present in the United States for the required ten year period prior to the applicant's birth. The director further noted that the applicant could not establish that both his parents were naturalized such that he could derive U.S. citizenship under former section 321 of the Act. With respect to former section 322 of the Act, the director noted that the applicant is over the age of 18 and therefore not eligible for benefits under that section. The application was denied accordingly.

On appeal, the applicant contended that he was in his father's sole custody following his parents' legal separation and that he therefore derived U.S. citizenship pursuant to former section 321(a)(3) of the Act. *See Form I-290B*.

The AAO found that the applicant did not derive U.S. citizenship through his father under former section 321 of the Act because his father acquired U.S. citizenship at birth, as of [REDACTED], and did not become a U.S. citizen through naturalization.¹ The AAO found that the applicant did not acquire U.S. citizenship under former section 301(g) of the Act because the applicant's father was not physically present in the United States for ten years prior to the applicant's birth. The AAO

¹ The applicant's mother also did not naturalize prior to the applicant's eighteenth birthday and the applicant's parents were married at the time of his birth, therefore the applicant could not derive U.S. citizenship through his mother under section 321 of the Act. Whether there was a legal separation of the applicant's parents and whether the applicant was in the physical and legal custody of either of his parents would have no bearing on whether the applicant was eligible for derivation of U.S. citizenship since the applicant's mother never naturalized and the applicant's father acquired his U.S. citizenship at birth and also did not naturalize. Section 321 of the Act only applies to individuals whose parent or parents obtained U.S. citizenship through naturalization.

found that the applicant also did not derive U.S. citizenship under former section 322 of the Act because, among other things, the applicant is already over the age of eighteen years. *See AAO's Decision*, dated August 9, 2011.

In his motion to reopen and reconsider, the applicant contends that the denial of the Form N600 is in error. *See Form I-290B and Attachment*, dated August 31, 2011. In support of his contentions, the applicant submits the referenced Form I-290B and attachment, copies of identity documentation for his spouse and children and copies of documentation already in the record. The entire record was reviewed in rendering a decision in this case.

8 C.F.R. § 103.5(a) provides, in pertinent part:

(2) Requirements for motion to reopen.

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. . .

(3) Requirements for motion to reconsider.

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

In his motion to reopen, the applicant submits identity documentation in regard to his spouse and children; however, the applicant fails to state any new facts that have developed since the AAO's decision that have any bearing on the applicant's case.

In his motion to reconsider, the applicant contends that he does not bear the burden of proof. He contends that he acquired U.S. citizenship through his father because his father resided in the United States for more than five years, five of which were while over the age of fourteen. The applicant contends that he acquired U.S. citizenship under section 301(d) of the Act, 8 U.S.C. § 1401(d) which requires that "a person born outside of the United States of parents, one of whom is a citizen of the United States who has been physically present in the United States or one of its outlying possessions for a continuous period of one year prior to birth of such person, and the other of whom is a national, but not a citizen of the United States; is a citizen of the United States at birth." He contends that he acquired U.S. citizenship under 8 U.S.C. § 1401(g) which states that "a person born outside the geographical limits of the United States of parents, one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States for a period totaling not less than five years, at least two of which were after attaining the age of fourteen." He contends that he meets the guidelines for derivative citizenship requirements under 8 U.S.C. § 1408(a)(4) because his father acknowledged paternity and retained legal custody of the applicant

since his admission to the United States as a lawful permanent resident at the age of sixteen. The applicant's contentions are unpersuasive. The applicant quotes sections of the law which are not applicable to his case because (1) the applicant's mother is not a national or citizen of the United States; (2) the applicant's father acquired his U.S. citizenship and did not become a U.S. citizen through naturalization; and (3) the sections of law quoted by the applicant are old sections of law that do not apply to someone born in 1980.

While the applicant contends that he does not bear the burden of proof and the burden of proof remains with the government, as discussed in the AAO's prior decision, the burden of proof lies with the applicant. The cases cited by the applicant only refer to the government burden of proof relating to removal proceedings and not to obtaining benefits under the Act. The applicant fails to make any argument supported by pertinent precedent decisions establishing that the AAO's prior decision was based on an incorrect application of law.

The applicant's evidence and claims on motion fail to establish that the AAO's prior decision to deny the application was erroneous. The applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). The applicant has failed to establish by a preponderance of the evidence that he meets the requirements set forth in former sections 301(g) and 321 of the Act.

ORDER: The motion is denied. The AAO's decision, dated August 9, 2011, is affirmed. The application remains denied.