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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

U.S. Citizenship and Immigration Services

[redacted]

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Date: JUL 19 2011 Office: SAN DIEGO, CA File: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act; 8 U.S.C. §1431 (2001)

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 $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 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 June 30, 1990 in Mexico. The applicant's parents were married in Mexico in April 1990. Her father, [redacted] became a U.S. citizen upon his naturalization on August 30, 1996, when the applicant was six years old. The applicant's mother is not a U.S. citizen. The applicant was admitted to the United States as a lawful permanent resident on October 13, 2000, when she was ten years old. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship through her father pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, as amended by the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000).

The district director denied the application finding that the applicant had not been "residing in" the United States with her U.S. citizen parent. *See* Decision of the District Director. The director's determination was based, in part, on information provided by the applicant in a sworn statement to immigration authorities. *Id.*

On appeal, the applicant, through counsel, maintains that she was "residing in" the United States as required by section 320 of the Act. *See* Applicant's Brief in Support of Appeal. Specifically, the applicant states that her family has resided in both Mexico and the United States. *Id.* The applicant further states that the director erred in relying on a sworn statement taken while she was in custody, when she was exhausted and confused. *Id.*

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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). The applicant was under 18 years old on the effective date of the CCA. Section 320 of the Act, as amended by the CCA, is therefore applicable to her case.

Section 320 of the Act provides, 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 was admitted to the United States as a lawful permanent resident when she was ten years old. Her father had naturalized in 1996, when the applicant was six years old. At issue in this case is whether the applicant was "residing in" the United States in her father's legal and physical custody after her admission as a lawful permanent resident.

The applicant maintains that her family resided together in both Mexico and the United States. In support of her claim, the applicant has submitted declarations signed by herself and her parents, and her father's tax records evidencing his employment in San Diego between 2000 and 2007. The applicant concedes that the family has been residing in Mexico full-time since 2007. She explains, however, that her father worked in the United States during the week and they visited him at his brother's home in San Diego every weekend. She further explains that she was exhausted and confused when she told immigration authorities, under oath, that her parents had not resided in the United States since 1997, and that she had been residing in Mexico.

The term "residence" is defined in section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33), as "the place of general abode of a person ... the principal, actual dwelling place in fact, without regard to intent." There is no evidence in the record suggesting that the applicant's principal, actual dwelling place was in the United States. The evidence in the record suggests only that the applicant's father was employed and may have resided in the United States during the relevant period, but the only indication that the applicant was residing with him is found in tax returns that were submitted after the fact, as well as the unsworn declarations of the applicant and her parents, and the affidavit of her uncle.

The AAO notes the Board of Immigration Appeals finding 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 AAO notes the applicant's explanation regarding her state of mind when she stated, under oath, that her parents had not resided in the United States since 1997 and that she was residing with them in Mexico. The applicant, however, has failed to demonstrate that she resided in the United States with her father. The evidence provided only establishes her father's employment and residence in the United States, not the applicant's. The AAO finds that the evidence submitted is unpersuasive, given the interest of witnesses and lack of corroborating documentation. The record does not contain documentary evidence relating specifically to the applicant's U.S. residence between the years 2000 and 2007. The applicant explains that she was in school in Mexico and in the United States only on the weekends. There is no documentary evidence in the record that she was in the United States even during the weekends. The applicant's unsworn declaration and those of her parents are nearly identical and fail to provide sufficient details when, for example, they refer to her period of purported residence in the United

States as being between the years 2000 and 2007. Her uncle's affidavit also lacks sufficient detail.

The applicant bears the burden of proof in these proceedings to establish the claimed citizenship. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 320.2(a). The applicant has failed to demonstrate her eligibility for citizenship under section 320 or any other provision of the Act. Her appeal will therefore be dismissed.

ORDER: The appeal is dismissed.