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

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PUBLIC COPY

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FILE: [redacted] Office: HARLINGEN, TX Date: MAR 03 2011

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under Section 322 of the Immigration and Nationality Act; 8 U.S.C. §1433

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 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 23, 1992 in Mexico. The applicant's father, was born in Mexico but acquired U.S. citizenship at birth through his U.S. citizen parent. The applicant's parents were married in Mexico in 1988, and divorced on January 6, 2000. The applicant's mother is not a U.S. citizen. The applicant's eighteenth birthday was on November 23, 2010. The applicant seeks a certificate of citizenship claiming that she derived U.S. citizenship through her father pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The field office director denied the application upon finding that the applicant was not residing in her father's physical custody. The director noted the applicant's and her mother's testimony, which stated that the applicant resided with her mother in Mexico, while her father resided in the United States.

On appeal, the applicant's father submits a letter and a document. The document is a notarized statement, dated August 26, 2010, transferring custody from the applicant's mother to her father. The notarized statement further states that the applicant has been in her mother's custody since her parents' divorce. The letter, signed by the applicant's father, appears to have been submitted to rebut the director's finding that the applicant resides with her mother in Mexico.

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Section 322 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. CCA § 104. The CCA benefits all persons who had not yet reached their eighteenth birthdays as of February 27, 2001. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Because the applicant was under 18 years old on February 27, 2001, she meets the age requirement for benefits under the CCA.

Section 322 of the Act, 8 U.S.C. § 1433, provides that:

> (a) A parent who is a citizen of the United States may apply for naturalization on behalf of a child born outside of the United States who has not acquired citizenship automatically under section 320. The Attorney General shall issue a certificate of citizenship to such applicant upon proof, to the satisfaction of the Attorney General, that the following conditions have been fulfilled:
>
> > (1) At least one parent is a citizen of the United States, whether by birth or naturalization.

(2) The United States citizen parent--

(A) has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years; or

(B) has a citizen parent who has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years.

(3) The child is under the age of eighteen years.

(4) The child is residing outside of the United States in the legal and physical custody of the applicant [citizen parent] (or, if the citizen parent is deceased, an individual who does not object to the application).

(5) The child is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.

(b) Upon approval of the application (which may be filed from abroad) and, except as provided in the last sentence of section 337(a), upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this Act of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the Attorney General with a certificate of citizenship.

(c) Subsections (a) and (b) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

At the outset, the AAO notes that the applicant reached the age of 18 on November 23, 2010. Sections 322(a)(3) and (b) of the Act, and the regulation at 8 C.F.R. §322.2(a)(3), require that a certificate of citizenship application be filed, adjudicated, and approved with the oath of allegiance administered before the child's eighteenth birthday. The AAO therefore finds that the applicant is ineligible for citizenship under the cited provision because she is already 18 years old.

The AAO further notes that section 322(a)(4) of the Act, and the regulation at 8 C.F.R. §322.2(a)(4), require that the applicant be "currently residing outside the United States in the legal and physical custody of the U.S. citizen parent." The record establishes that the applicant's

father is residing in the United States. The record is unclear whether the applicant is residing in Mexico with her mother or in the United States with her father. In either case, however, it is clear that she is not residing outside the United States in her father's custody because her father is not residing outside the United States. The applicant is therefore also ineligible for citizenship under section 322(a)(4) of the Act.

A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 885 (1988). The applicant is statutorily ineligible for U.S. citizenship under sections 322(a)(3) and (4) of the Act. Her appeal will therefore be dismissed.

ORDER: The appeal is dismissed.