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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

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Date: NOV 03 2011

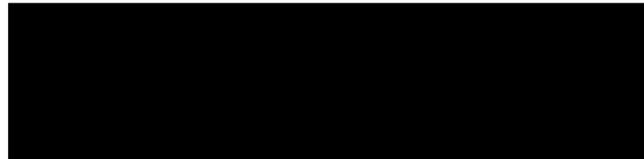
Office: CHICAGO, IL

FILE: 

IN RE: 

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

ON BEHALF OF APPLICANT:

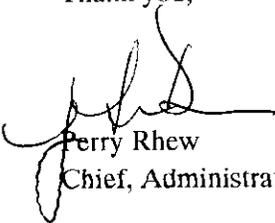


INSTRUCTIONS:

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 Field Office Director, Chicago, Illinois, denied the Application for Certificate of Citizenship (Form N-600) and 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 in Guanajuato, Mexico on February 15, 1988. The applicant's father became a U.S. citizen by naturalization on October 16, 1997. The applicant's mother is not a U.S. citizen. The applicant's parents were never married. The applicant was admitted to the United States as a lawful permanent resident on February 20, 2001. The applicant seeks a certificate of citizenship claiming that he derived U.S. citizenship from his father pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The field office director determined that the applicant failed to establish eligibility for derivative citizenship under section 320 of the Act because he failed to establish that he was legitimated. The field office director denied the application accordingly. *See Decision of the Field Office Director*, dated February 14, 2011. On appeal, counsel contends that the field office director incorrectly required the applicant to be legitimated under both Mexican and Illinois law and that the applicant was legitimated under Illinois law.¹ *See Counsel's Brief*, undated.

The applicable law for derivative citizenship purposes is that in effect at the time the critical events giving rise to eligibility occurred. *Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005); *accord Jordon v. Attorney General*, 424 F.3d 320, 328 (3d Cir. 2005). Section 320 of the Act, as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (CCA), applies to this case because the applicant was not yet over the age of eighteen years on February 27, 2001, the effective date of the CCA. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 156 (BIA 2001) (en banc). Section 320(a) of the Act, 8 U.S.C. § 1431(a), provides:

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 regulations define the term "legal custody" to refer to "the responsibility for and authority over a child." 8 C.F.R. § 320.1. Additionally,

¹ The field office director did not require that the applicant be legitimated under both Mexican and Illinois law. The field office director found that the applicant was not legitimated under either Mexican or Illinois law.

For the purpose of the CCA, the Service will presume that a U.S. citizen parent has legal custody of a child, and will recognize that U.S. citizen parent as having lawful authority over the child, absent evidence to the contrary, in the case of . . . a biological child born out of wedlock who has been legitimated and currently resides with the natural parent.

Id. Further, for 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

Section 101(c) of the Act, 8 U.S.C. § 1101(c)(1).

Accordingly, to meet the definition of “child” for citizenship purposes under section 101(c) of the Act, the applicant must establish, among other things, that he was legitimated before his sixteenth birthday on February 15, 2004. The definition of “child” in section 101(b)(1)(D) of the Act, 8 U.S.C. § 1101(b)(1)(D), which includes a child born out of wedlock “if the father has or had a bona fide parent-child relationship with the person,” is not applicable to naturalization and citizenship claims under title III of the Act.

Here, the applicant has not submitted any evidence that he has been legitimated under the laws of Mexico, and counsel does not dispute the director’s findings on this issue on appeal. Regarding legitimation under Illinois law, counsel contends that the applicant was legitimated because Illinois law does not recognize a distinction between legitimate and illegitimate children. According to counsel, Illinois law still requires that parentage and the parent-child relationship be established under set parameters in order for the parent-child relationship to be recognized.

To determine whether the applicant was legitimated under Illinois law, we must look to the Illinois Statutes in effect at the time the applicant was present in Illinois, and under his father’s physical custody while under the age of 16. Under the Illinois Statutes, Chapter 750 Act 45 (P.A. 92-16, § 98, eff. June 28, 2001), a presumption of parentage exists for a child born out of wedlock upon the subsequent marriage of the natural parents and the listing of the child’s father on the child’s birth certificate. Alternatively, paternity can be established if: (1) the child’s natural mother and father have signed an acknowledgment of paternity in accordance with rules adopted by the Department of Healthcare and Family Services under Section 10-17.7 of the Illinois Public Aid Code; or (2) the child’s natural mother and father have signed an acknowledgment of parentage in accordance with Section 12 of the Vital Records Act. If there is no presumption of parentage, the parent-child relationship can be established by the signing and witnessing of a voluntary acknowledgment of parentage in accordance with Section 12 of the Vital Records Act or Section 10-17.7 of the Illinois Public Aid Code. Because the applicant’s birth parents never married and he has failed to provide evidence establishing the presumption of parentage or the establishment of the parent-child relationship as defined under Illinois law, he does not meet the definition of a legitimated child under section 101(c) of the Act.

The applicant must meet his burden of proof by establishing the claimed citizenship by a preponderance of the evidence. 8 C.F.R. § 320.3. Here, the applicant has not met this burden. Accordingly, the applicant is not eligible for a certificate of citizenship under section 320(a) of the Act, and the appeal will be dismissed.

ORDER: The appeal is dismissed.