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

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

Date: NOV 18 2013 Office: DALLAS, TX [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director (director), Dallas, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The director's decision shall be withdrawn and the matter remanded for entry of a new decision.

The record reflects that the applicant was born on September 29, 2011. The applicant's father became a U.S. citizen upon his naturalization on May 26, 2000. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship through her father.

The director denied the application finding that the applicant did not acquire U.S. citizenship because she had not been admitted to the United States as a lawful permanent resident as is required by section 320 of 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).

On appeal, the applicant, through counsel, maintains that she is entitled to U.S. citizenship through her father, and that she cannot travel to the United States because she is residing in Mexico with her mother. *See* Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO.

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth. *See Chau v. Immigration and Naturalization Service,* 247 F.3d 1026, 1028 n.3 (9th Cir. 2001) (internal citation omitted). The applicant in the present matter was born in 2011, to a U.S. citizen father. Section 301(g) of the Act, 8 U.S.C. § 1401(g) therefore applies to the present case.

Section 301(g) of the Act states, in pertinent part, that the following shall be nationals and citizens of the United States at birth:

> [A] person born outside the geographical limits of the United States and its outlying possessions 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 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 ….

As the director erroneously considered the applicant's eligibility for U.S. citizenship only under section 320 of the Act, her decision must be withdrawn and the matter remanded for entry of a new decision. Upon remand, the director must provide the applicant an opportunity to submit evidence of her father's physical presence in the United States prior to her birth. If the applicant is found ineligible for citizenship under section 301(g) of the Act, the director shall certify her decision to the AAO for review.

ORDER: The director's decision is withdrawn and the matter remanded for entry of a new decision, which if adverse to the applicant, shall be certified to the AAO for review.