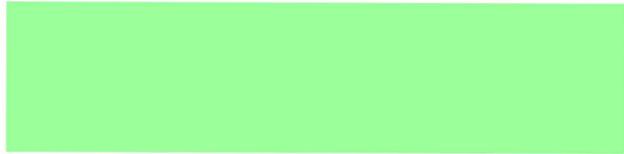




**U.S. Citizenship
and Immigration
Services**

(b)(6)



Date: **OCT 16 2013**

Office: ATLANTA, GA

FILE: 

IN RE:

Applicant: 

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director (the director), Atlanta, Georgia, and is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded for entry of a new decision.

The record reflects that the applicant was born on August 16, 2005 in Mexico. The applicant's parents are [REDACTED]. The applicant was admitted to the United States as a non-immigrant in 2006. The applicant's father became a U.S. citizen upon his naturalization on April 22, 1996. The applicant's mother became a U.S. citizen upon her naturalization on October 23, 2007. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship through her U.S. citizen parents.

The director denied the application finding that the applicant did not acquire U.S. citizenship under 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), because she had not been admitted to the United States as a lawful permanent resident.

On appeal, the applicant requests, in relevant part, that her citizenship claim be reconsidered. 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 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 born in 2005. 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 record indicates that the applicant has not been admitted to the United States as a lawful permanent resident and therefore did not automatically acquire U.S. citizenship under section 320 of the Act.

The matter must nevertheless be remanded to the director for consideration of the applicant's claim under section 301(g) of the Act, 8 U.S.C. § 1401(g)(2005).

Section 301(g) of the Act provides, in relevant 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

The applicant's father was a U.S. citizen at the time of the applicant's birth in 2005. The applicant's parents were married in Idaho in 1990. The record contains federal income tax information suggesting that the applicant's father was present in the United States prior to the applicant's birth. The applicant's father's naturalization in 1996 also suggests that the applicant resided in the United States for at least five years, as five years of residence is normally the period required to naturalize under section 316 of the Act, 8 U.S.C. §1427.

As the director only considered the applicant's eligibility for U.S. citizenship under section 320 of the Act, his 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 to establish that her father was physically present in the United States for five years prior to 2005, two of which were after 1984 (the applicant's father's 14th birthday). The director shall consider the applicant's eligibility for U.S. citizenship under section 301(g) of the Act and enter a new decision which, if adverse to the applicant, shall be certified 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.