



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: OCT 31 2013

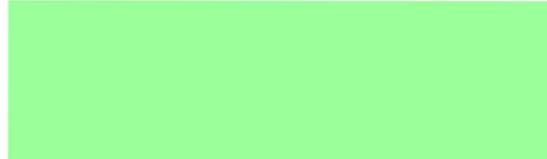
OFFICE: HARLINGEN, TX

FILE: 

IN RE: 

APPLICATION: Application for Certificate of Citizenship under Section 301 of the former Immigration and Nationality Act, 8 U.S.C. § 1401

ON BEHALF OF APPLICANT:



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 Form N-600, Application for Certificate of Citizenship (Form N-600) was denied by the Field Office Director, Harlingen, Texas (the director), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The matter shall be remanded to the director for further proceedings consistent with this decision and entry of a new decision.

The record reflects that the applicant was born in Mexico on November 23, 1968, to married parents. The applicant's mother was born in the United States, and is a U.S. citizen. The applicant's father is not a U.S. citizen. The applicant seeks a certificate of citizenship pursuant to former section 301(a)(7) of the Immigration and Nationality Act (the former Act), 8 U.S.C. § 1401(a)(7), based on the claim that he acquired U.S. citizenship at birth through his mother.

The director determined in a decision dated March 12, 2013, that the applicant abandoned his Form N-600 by failing to appear for a scheduled interview or otherwise responding. The application was denied accordingly.

On appeal, counsel for the applicant asserts that the applicant did not receive notification of his scheduled citizenship interview; and that, despite submitting a Form G-28, notice of appearance when the applicant's Form N-600 was filed, counsel was also not notified of the applicant's scheduled interview. Counsel indicates that the applicant changed his address after filing the Form N-600, but that under U.S. Postal Service policy, correspondence mailed to the applicant's former Form N-600 address would have been forwarded to the applicant. Counsel requests, on this basis, that the applicant be given another opportunity to present evidence in his case via a telephonic interview. In support of the assertions, counsel submits a letter from the U.S. Postal Service, dated January 9, 2013, reflecting that the "postal customer" submitted a change of address from, [REDACTED] (the address listed on the applicant's Form N-600), to [REDACTED]. Counsel also submits a Form AR-11, Alien's Change of Address Card, dated March 26, 2013 and submitted to USCIS on April 5, 2013, reflecting the applicant's change of address from, [REDACTED]. Counsel additionally notes that the applicant is currently incarcerated and provides the address where the applicant is incarcerated.

The regulation provides, in pertinent part, at 8 C.F.R. § 103.2(b)(13):

- (ii) [I]f USCIS requires an individual to appear for . . . an interview, or other required in-person process but the person does not appear, the benefit request shall be considered abandoned and denied unless by the appointment time USCIS has received a change of address or rescheduling request that the agency concludes warrants excusing the failure to appear.

The regulation provides, in pertinent part, at 8 C.F.R. § 103.2(b)(15) that:

[A] denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under § 103.5. . . .¹ [D]enial due to abandonment does not preclude the filing of a new application or petition with a new fee.

In the present matter, the director denied the applicant's Form N-600 application due to abandonment, based on the applicant's failure to appear for a scheduled citizenship interview, or to otherwise respond. We find upon review, however, that the record contains no evidence that a Form N-600 related citizenship interview was scheduled for the applicant, or that an interview notice was generated or sent to the applicant or counsel. The basis for the director's abandonment denial is therefore not supported by the record.

As the director failed to consider the applicant's eligibility for U.S. citizenship under section 301(a)(7) of the former Act, the decision must be withdrawn and the matter remanded for entry of a new decision. Upon remand, the director must provide the applicant with an opportunity to submit evidence that he fulfilled the requirements of section 301(a)(7) of the former Act before entering a new decision into the record. If the applicant is found to be ineligible for citizenship, the director shall certify the decision to the AAO for review.

ORDER: The matter is remanded to the director for further proceedings consistent with this decision and entry of a new decision which, if adverse to the applicant, shall be certified to the AAO for review.

¹ The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the field office director of the Harlingen, Texas field office. *See* 8 C.F.R. § 103.5(a)(1)(ii).