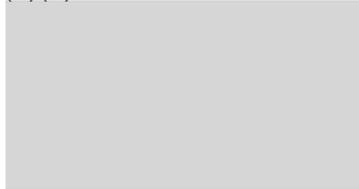




U.S. Citizenship
and Immigration
Services

(b)(6)



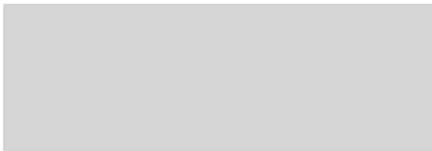
DATE: JUL 24 2015

FILE #: [REDACTED]
APPLICATION RECEIPT #: [REDACTED]

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Yakima, Washington, denied the application. 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 Mexico on July 14, 1961 to a U.S. citizen mother and an alien father. The applicant's parents were married prior to the applicant's birth. The applicant seeks a certificate of citizenship pursuant to former section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g), based on the claim that she acquired U.S. citizenship at birth through her mother.¹

The Field Office Director determined that the applicant was not residing in the United States and therefore U.S. Citizenship and Immigration Services (USCIS) does not have jurisdiction over the Form N-600, Application for Certificate of Citizenship (Form N-600). The Form N-600 was denied accordingly. *See Decision of the Field Office Director*, November 26, 2014.

On appeal, the applicant, through counsel, contends that USCIS has jurisdiction over this case, and that the Field Office Director erred in finding that only the Secretary of State has jurisdiction over this case.

Section 341(a) of the Act, 8 U.S.C. § 1452, provides that a person who claims to have derived U.S. citizenship through a qualifying relative may apply to the Attorney General (now the Secretary, Department of Homeland Security) for a certificate of citizenship, and that a certificate may be furnished by the Attorney General if such individual is at the time within the United States.

The applicant filed her Form N-600 with USCIS on September 22, 2014, indicating that she was physically present and residing outside of the United States in Mexico.

A citizenship claim made by an individual physically present outside of the United States is only properly made before the U.S. Department of State (DOS) through a consular officer. *See* Section 104(a) of the Act, 8 U.S.C. § 1104(a) (providing, in pertinent part, that the "Secretary of State shall be charged with the administration and the enforcement of the provisions of this Act and all other immigration and nationality laws relating to ... (3) the determination of nationality of a person not in the United States"); *see also* 22 C.F.R. § 50.2 (providing that DOS "[s]hall determine claims to United States nationality when made by persons abroad on the basis of an application for registration, for a passport, or for a Consular Report of Birth Abroad of a Citizen of the United States of America . . .").

Counsel for the applicant asserts that, as the language of section 104(a) of the Act explicitly states

¹ We note that the applicant, through counsel, contends that her mother received her certificate of citizenship on [REDACTED], 1965, and took an oath of allegiance on February [REDACTED] 1966, and therefore the applicant's eligibility for citizenship should be considered as having derived citizenship under former section 321 of the Act, 8 U.S.C. § 1432 (repealed), as the child of a naturalized U.S. citizen parent.



that the Department of State can make determinations of nationality, the Department of State has not been authorized by Congress to make determinations of citizenship. However, it is noted that the Supreme Court, in *Miller v. Albright*, 523 U.S 420 (1998), indicates that the Department of State makes determinations on citizenship applications and the court does not possess the power to order the department's approval of these applications.

As the record demonstrates that the applicant is physically present in Mexico, jurisdiction to adjudicate her claim to U.S. citizenship lies within the U.S. Department of State, and not USCIS.

It is the applicant's burden to establish the claimed citizenship by a preponderance of the evidence. Section 341(a) of the Act, 8 U.S.C. § 1452(a); 8 C.F.R. § 341.2(c). Here, that burden has not been met.

ORDER: The appeal is dismissed.