U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

MATTER OF L-M-T-

DATE: AUG. 16, 2016

APPEAL OF HARLINGEN, TEXAS FIELD OFFICE DECISION

APPLICATION: FORM N-600, APPLICATION FOR CERTIFICATE OF CITIZENSHIP

The Applicant, a native and citizen of Mexico, seeks a Certificate of Citizenship. *See* Immigration and Nationality Act (the Act) section 322, 8 U.S.C. § 1433.[1] A U.S. citizen parent may apply for the certificate of citizenship on behalf of a child born outside the United States. At least one parent must be a citizen of the United States by birth or naturalization, the child must be physically present in the United States pursuant to a lawful admission, and must be under the age of 18 years and in the legal custody of the citizen parent.

The Field Office Director, Harlingen, Texas, denied the application. The Director indicated that the Applicant did not to respond to a request for evidence (RFE). The Director further concluded that the Applicant did not qualify under former section 320 or former section 321 of the Act as the Applicant did not obtain lawful permanent resident status, as required under these two statutes, nor did she qualify under current section 320 of the Act, as the Applicant was over the age of 18 on February 21, 2001.

The matter is now before us on appeal. On appeal, the Applicant submits evidence requested in the Director's RFE.

Upon *de novo* review, we will dismiss the appeal.

## I. LAW

The Applicant seeks a certificate of citizenship indicating that she derived U.S. citizenship from the Applicant's adoptive U.S. citizen parents. The Applicant was born in Mexico on [redacted] On [redacted] 1985, the Applicant was adopted by U.S. citizen parents in [redacted] Texas, when the Applicant was [redacted] years of age. The record does not reflect that the Applicant was admitted to the United States as a lawful permanent resident.

[1] The Applicant falls under the provisions of this section as amended by Pub. L. 95-417, Oct. 5, 1978. Section 322 of the Act was further amended by Sec. 102(a), Immigration and Nationality Technical Corrections Act of 1994, Act of October 25, 1994, Pub. L. No. 103-416, 108 Stat. 4305; Sec. 1(b), Pub. L. No. 106-139, Act of Dec. 7 1999, 113 Stat. 1696; and further amended by Sec. 102(a), title I, Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (2000).

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 last critical event in this case giving rise to eligibility is the Applicant's 18th birthday, on [redacted] We therefore consider the Applicant's citizenship claim under the provisions of former section 322 of the Act, in effect in 1987. We also consider the Applicant's citizenship claim under former section 320 of the Act, 8 U.S.C. § 1431,[2] and former section 321 of the Act, 8 U.S.C. § 1432,[3] both of which were in effect in 1987.

Former section 322 of the Act, in effect in 1987, provided in pertinent part that:

> Child Born Outside of United States; Naturalization on Petition of Citizen Parent; Requirements and Exemptions
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> (a) A child born outside of the United States, one or both of whose parents is at the time of petitioning for the naturalization of the child, a citizen of the United States, either by birth of naturalization, may be naturalized if unmarried and under the age of eighteen…..
>
> (b) subsection (a) of this section shall apply to an adopted child only if the child is residing in the United States, in the custody of the adoptive parent or parents, pursuant to a lawful admission for permanent residence….

Former section 320 of the Act provided that:

> (a) A child born outside of the United States, one of whose parents at the time of the child's birth was an alien and the other of whose parents then was and never thereafter ceased to be a citizen of the United States, shall, if such parent is naturalized, become a citizen of the United States, when
>
> (1) such naturalization takes place while such child is under the age of 18 years; and
>
> (2) such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of naturalization or thereafter and begins to reside permanently in the United States while under the age of 18 years.

Former section 321 of the Act, in effect in 1987, provided that:

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[2] *amended by* Sec. 102(a), title I, Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (2000).

[3] *repealed by* Sec. 103(a), title I, Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (2000).

(a) A child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:

(1) The naturalization of both parents; or

(2) The naturalization of the surviving parent if one of the parents is deceased; or

(3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if the child was born out of wedlock and the paternity of the child has not been established by legitimation; and if-

(4) Such naturalization takes place while such child is under the age of 18 years; and

(5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (1) of this subsection, or the parent naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

## II. FACTS AND PROCEDURAL HISTORY

As previously stated, the Applicant was born in Mexico on [redacted] According to the Applicant's Form N-600, Application for Certificate of Citizenship, she initially entered the United States on January 1, 1982, at [redacted] Texas. There is no evidence in the record that the Applicant ever made a lawful entry into the United States. On [redacted] 1985, the Applicant was adopted by U.S. citizen parents in [redacted] Texas, when the Applicant was [redacted] years of age. On June 10, 1985, the Applicant's adoptive parents registered a birth certificate for the Applicant in Texas indicating that the Applicant was born in [redacted] Mexico, and listing her adoptive parents as her father and mother.

In March 2015, the Director denied the Applicant's N-600, noting that the Applicant did not qualify for a certificate of citizenship under former sections 320 and 321 of the Act, as there is no evidence that the Applicant was lawfully admitted to the United States for permanent residence. In addition, the Director found that the Applicant did not respond to a 2014 RFE requesting additional information related her adoption and her relationship with her adoptive parents. On appeal, the Applicant submits additional evidence requested in the Director's 2014 RFE, including a copy of the marriage certificate of the Applicant's adoptive parents, immunization records, and school documents.

## III. ANALYSIS

The issues in this case are whether the Applicant qualifies for a certificate of citizenship under former sections 320 and 321 of the Act, or under former section 322 of the Act. On appeal, the Applicant makes no assertions. Instead, she submits a copy of her father's birth certificate, her adoption decree, the marriage certificate of the Applicant's adoptive parents, immunization records, and school records.

We affirm that, because the Applicant has not shown she resided in the United States as a lawful permanent resident, much less before the age of 18, she is ineligible for a certificate of citizenship under former sections 320 and 321 of the Act. Furthermore, as the Applicant was adopted, this also disqualifies the Applicant for eligibility under former section 322(b) of the Act. We lastly find that, because the Applicant's parents did not file a petition for naturalization on the Applicant's behalf before the Applicant's 18th birthday, on [redacted] and the Applicant did not naturalize before that date, the Applicant may not benefit from the provisions of former section 322 of the Act.

### A. Eligibility Under Former Sections 320 and 321 of the Act

We concur with the Director that the Applicant does not qualify for derivative citizenship under former sections 320 and 321 of the Act. The Applicant was not residing in the United States pursuant to a lawful admission for permanent residence, as required under former section 320(a)(2) of the Act, and under former section 321(a)(5) of the Act. As such, the Applicant can only qualify for a Certificate of Citizenship under former section 322 of the Act.

### B. Eligibility Under Former Section 322 of the Act

Former section 322 of the Act required the Applicant's adoptive parents to petition for the naturalization of the Applicant prior to her 18th birthday. The record shows that the Applicant's adoptive parents legally adopted the Applicant on [redacted] 1985, when the Applicant was under 18. The Applicant has also submitted a birth certificate for the Applicant in the State of Texas indicating that the Applicant was born in [redacted] Mexico, listing her adoptive parents as her father and mother. However, the Applicant's parents did not comply with the provisions of former section 322 of the Act, which required them to petition for the Applicant's naturalization prior to her 18th birthday.

The record reflects that on [redacted] 1990, the Applicant was apprehended while attempting to enter the United States at [redacted] Texas. According to the Form I-213, Record of Deportable Alien, U.S. immigration officials summoned the Applicant's adoptive mother, who stated that she and her husband never finished processing the Applicant's paperwork for U.S. citizenship "due to procrastination."

Former section 322 of the Act also contains an additional requirement for adopted children – that the adopted child must be residing in the United States, in the custody of the adoptive parent or parents, pursuant to a lawful admission for permanent residence. As discussed above, the Applicant has not

shown that she resided in the United States as a lawful permanent resident while under 18. Therefore, the Applicant has also not met this former section 322(b) of the Act requirement.

As the Applicant did not successfully naturalize pursuant to an Application for Naturalization prior to her 18th birthday, or reside as a lawful permanent resident in her adoptive parents' custody while under 18, the Applicant does not qualify for a certificate of citizenship under former section 322 of the Act.[4]

## IV. CONCLUSION

In view of the above, the Applicant has not established that she qualifies for a certificate of citizenship pursuant to former section 322 of the Act, or any other section of the law.

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). The Applicant has not met that burden. Accordingly, we dismiss the appeal.

**ORDER:** The appeal is dismissed.

Cite as *Matter of L-M-T-*, ID# 16962 (AAO Aug. 16, 2016)

[4] We note that the record includes a letter from the Applicant's former attorney, which states that the Applicant's daughter is a U.S. citizen and filed an immediate relative immigrant visa petition on behalf of the Applicant, providing the Applicant with an alternative avenue to regularize her immigration status in the United States.