



U.S. Citizenship
and Immigration
Services

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FILE:

Office: SAN FRANCISCO (FRESNO), CA

Date: **OCT 21 2005**

IN RE:

Applicant:

APPLICATION:

Application for Certificate of Citizenship under Section 322 of the former Immigration and Nationality Act; 8 U.S.C. § 1433.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on June 15, 1981, in Mexico. The applicant's father, [REDACTED] born in Mexico on November 11, 1949, and he became a naturalized U.S. citizen on August 11, 1988, when the applicant was seven years old. The applicant's mother was born in Mexico. She is not a U.S. citizen. The applicant's parents married in Mexico on June 25, 1975, and the applicant was admitted into the United States as a lawful permanent resident on May 31, 1989. The applicant seeks a certificate of citizenship pursuant to section 322 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1433.

The district director determined that the applicant was statutorily ineligible for a certificate of citizenship under section 322 of the former Act because she was over the age of eighteen at the time that her application was adjudicated. The application was denied accordingly.

On appeal, the applicant asserts that she was under the age of eighteen when her Form N-600, Application for Certificate of Citizenship was filed, and that she is therefore be entitled to citizenship.

The AAO notes that the requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and that U.S. Citizenship and Immigration Services (CIS) lacks authority to issue a certificate of citizenship when an applicant fails to meet the statutory provisions set forth in the Act. *Iddir v. INS*, 301 F.3d 492 (7th Cir. 2002). Accordingly, the AAO finds that the applicant's eligibility for citizenship is not affected or changed by processing delays, and that in order to obtain a certificate of citizenship, the applicant must establish that she fully meets section 322 of the former Act requirements.

Section 322 of the former Act stated in pertinent part:

(a) Application of citizen parents; requirements

A parent who is a citizen of the United States may apply to the Attorney General [now the Secretary, Homeland Security, "Secretary"] for a certificate of citizenship on behalf of a child born outside the United States. The Attorney General [Secretary] shall issue such a certificate of citizenship upon proof to the satisfaction of the Attorney General [Secretary] that the following conditions have been fulfilled:

- 1) At least one parent is a citizen of the United States, whether by birth or naturalization.
- 2) The child is physically present in the United States pursuant to a lawful admission.
- 3) The child is under the age of 18 years and in the legal custody of the citizen parent.

....

b) Attainment of citizenship status; receipt of certificate

Upon approval of the application . . . [and] upon taking and subscribing before an officer of the Service [CIS] within the United States to the oath of allegiance required by this chapter of an applicant for naturalization, the child shall become a citizen of the United

States and shall be furnished by the Attorney General [Secretary] with a certificate of citizenship.

The terms set forth in section 322 of the former Act make clear that, in addition to meeting the requirements of section 322(a) of the former Act, an applicant must also meet the requirements of section 322(b), by establishing that the application for U.S. citizenship was approved by the Immigration and Naturalization Service (now U.S. Citizenship and Immigration Services, CIS), and that an oath of allegiance was taken before the applicant's eighteenth birthday. In the present matter, the applicant has failed to meet the requirements set forth in section 322(b) of the former Act.

The AAO notes that the applicant has also failed to establish that she qualifies for a certificate of citizenship under sections 320 and 321 of the former Act, 8 U.S.C. §§ 1431 and 1432.

Section 320 of the former 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.

Neither of the applicant's parents were U.S. citizens when she was born. The applicant therefore does not qualify for consideration under section 320 of the former Act.

Section 321 of the former Act provided, in pertinent part, that:

(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 said 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 (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

The applicant failed to establish that both of her parents became naturalized U.S. citizens prior to her eighteenth birthday, and the applicant does not otherwise meet the requirements set forth in section 321 of the former Act.

8 C.F.R. § 341.2(c) states that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. The applicant has failed to meet her burden. The appeal will therefore be dismissed.¹

ORDER: The appeal is dismissed.

¹ The AAO notes that the present decision is without prejudice to the applicant's filing, if eligible, an N-400, Application for Naturalization pursuant to section 316 of the Act, 8 U.S.C. § 1427.