

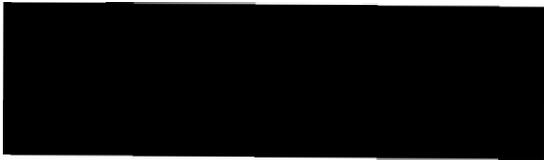
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: DALLAS, TX Date: MAY 28 2008

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Former Section 322 of the Immigration and Nationality Act; 8 U.S.C. § 1431.

ON BEHALF OF APPLICANT:



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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Dallas, Texas and 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 on September 1, 1971 in Mexico. She was legally adopted by [REDACTED] on December 16, 1980 in Dona Ana County District Court, Las Cruces, New Mexico when she was nine years old. The applicant's natural mother, [REDACTED], became a U.S. citizen on June 11, 1993. The applicant was admitted to the United States as a lawful permanent resident on May 25, 1976, when she was four years old. She seeks a certificate of citizenship under former section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The district director found the applicant's claim to citizenship through adoption could not be considered under the amendments to the Act made by the Child Citizenship Act of 2000 (CCA), as the CCA benefited only those persons who had not yet turned 18 years on February 27, 2001, the effective date of the legislation.. The district director found the applicant ineligible for citizenship under former section 320 of the Act because her mother had not become a U.S. citizen prior to the applicant's 18th birthday. The district director also concluded that the applicant could not qualify for citizenship under section 321 of the Act, repealed by the CCA, on this same basis.¹

On appeal, counsel contends that the applicant derived citizenship pursuant to the Act and that the denial of the Form N-600, Application for Certificate of Citizenship, is a due process constitutional violation. She, further, asserts that the applicant is entitled to a Certificate of Citizenship under section 301(g) of the Act and that Citizenship and Immigration Services' (CIS) denial of the Form N-600 fails to recognize the full faith and credit mandate of the applicant's New Mexico adoption decree, which establishes the equivalent of a biological relationship between the applicant and [REDACTED]. In support of her claim that the applicant should be considered to be [REDACTED]'s biological child, counsel cites from Chapter 32A, Article 5 of the New Mexico Statutes Annotated (1978):

After adoption, the adoptee and the petitioner shall sustain the legal relation of parent and child as if the adoptee were the biological child of the petitioner and the petitioner were the biological parent of the child.

The AAO notes counsel's contentions regarding the impact of New Mexico adoption law on this proceeding, as well as her claim that the denial of the Form N-600 violated due process, but finds neither to be persuasive. In *Nehme v. Immigration and Naturalization Service*, 252 F.3d 415 (5th Cir. 2001), the Fifth Circuit Court of Appeals found that, absent plain language to the contrary, Congress does not make the application of a federal act dependent on state law and that a state-law definition of a federal statutory term is appropriate only where the Congress clearly did not intend uniformity. In the area of naturalization and citizenship law, the Constitution specifically directs the U.S. Congress to legislate *uniform rules of naturalization*, including the granting of citizenship at birth to certain categories of persons not contemplated in the 14th Amendment's

¹ The AAO notes that the record contains a July 30, 2004 denial issued to the applicant by the district director. As that denial also deals with the applicant's ineligibility for a certificate of citizenship under former section 320 of the Act, it is not addressed separately in this decision.

definition of U.S. citizen. Accordingly, the requirements of section 301(g) may not be defined by New Mexico adoption law as counsel contends.²

Although counsel also asserts that the applicant was not afforded due process, she has failed to show that any violation of the statute or regulations resulted in “substantial prejudice” to the applicant. *See De Zavala v. Ashcroft*, 385 F.3d 879, 883 (5th Cir. 2004) (holding that an alien “must make an initial showing of substantial prejudice” to prevail on a due process challenge). A review of the record and the district director’s decision fails to indicate that the district director inappropriately applied the statute in this case. As counsel’s primary complaint is CIS’ denial of the application, the AAO does not find the applicant to have met her burden of proof. Denial of the Form N-600 was the proper result under the Act. Counsel’s assertion regarding the denial of due process is without merit.

The AAO now turns to a consideration of the applicant’s claim to U.S. citizenship based on her 1980 adoption by [REDACTED].

The applicant contends that she acquired U.S. citizenship under section 301(g) of the Act, based on her adoption by [REDACTED]. Section 301(g) of the Act, one of several statutory definitions of persons who may be deemed to be nationals and citizens of the United States at birth, establishes a U.S. citizen as:

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

Therefore, for an individual born abroad to acquire U.S. citizenship under section 301(g) of the Act that individual must be born to a U.S. citizen parent. The prerequisite of a blood relationship for transmitting U.S. citizenship to children born abroad is set forth in Volume 7, Foreign Affairs Manual (FAM), U.S. Department of State, which states in pertinent part:

The laws on acquisition of U.S. citizenship through a parent have always contemplated the existence of a blood relationship between the child and the parent(s) through whom citizenship is claimed Absent a blood relationship between the child and the parent on whose citizenship the child’s own claim is based, U.S. citizenship is not acquired. [7 FAM 1131.4]

The FAM specifically notes that adoption does not automatically confer U.S. citizenship on a child. *See* 7 FAM 1131.3.

As the applicant in this matter is not the natural child of [REDACTED], she cannot establish that she acquired U.S. citizenship under section 301(g) of the Act. Instead, she must demonstrate her claim to citizenship under former section 322 of the Act, which allowed for the acquisition of individuals adopted by U.S. citizens. Although, as previously noted, section 322 of the Act was repealed by the CCA of 2000, the AAO notes that

² Moreover, the AAO finds the New Mexico statute cited by counsel to accord equal rights under state law to biological and adopted children rather than to remove the distinction between biological and adopted children.

any person who would have acquired automatic citizenship under its provisions may apply for a certificate of citizenship at any time. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001)

Pursuant to former section 322:

(a) 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) Upon approval of the application . . . [and] upon taking and subscribing before an officer of the Service 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.

(c) Subsection (a) of this section shall apply to the adopted child of a United States citizen adoptive parent if the conditions specified in such subsection have been fulfilled.

The AAO notes that, whether or not an applicant satisfies the requirements set forth in former section 322(a) of the Act, former section 322(b) requires the applicant's Form N-600 to be approved by CIS prior to his or her 18th birthday, and that the applicant take an oath of allegiance prior to turning 18 years of age. The applicant in the present case turned 18 years of age on September 1, 1989 and, therefore, is unable to meet these requirements. Accordingly, the appeal will be dismissed

The AAO notes "[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." *Fedorenko v United States*, 449 U.S. 490, 506 (1981). The regulation at 8 C.F.R. § 341.2 provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. In order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is "probably true" or "more likely than not." See *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989). The applicant has not met her burden in this proceeding.

ORDER: The appeal will be dismissed.