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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

MAY 07 2003

FILE [redacted] Office: HARLINGEN, TEXAS Date:

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship on behalf of an Adopted Child under sections 320 and 322 of the Immigration and Nationality Act, 8 U.S.C. §§ 1431 and 1433

PUBLIC COPY

ON BEHALF OF APPLICANT: Self-Represented

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The applicant was born on November 16, 1983, in Rio Bravo, Mexico. The record indicates that the applicant had an Immigration and Naturalization Service ("INS", now known as the Bureau of Citizenship and Immigration Services) border-crossing card and that he was last admitted into the United States on September 15, 1999, using his border-crossing card. The record indicates further that the applicant's natural mother, [redacted] relinquished full legal and physical custody of the applicant to [redacted] a U.S. citizen, on July 27, 2000. The applicant was 16-years-old at that time. The applicant was formally adopted by [redacted] on April 18, 2001, when the applicant was 17-years-old.

Ms. [redacted] filed a Form N-643, Application for Certificate of Citizenship on Behalf of An Adopted Child by U.S. Citizen Adoptive Parents on April 26, 2001. On September 23, 2002, the district director in Harlingen, Texas concluded that the applicant was statutorily ineligible for citizenship under section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433. The application was denied accordingly.

Section 322 of the Act applies to children born and residing outside of the United States. The section provides that:

> (a) A parent who is a citizen of the United States (or, if the citizen parent has died during the preceding 5 years, a citizen grandparent or citizen legal guardian) may apply for naturalization on behalf of a child born outside of the United States who has not acquired citizenship automatically under section 320. The Attorney General shall issue a certificate of citizenship to such applicant upon proof, to the satisfaction of the Attorney General, that the following conditions have been fulfilled:
>
> > (1) At least one parent (or, at the time of his or her death, was) is a citizen of the United States, whether by birth or naturalization.
> >
> > (2) The United States citizen parent--
> >
> > > (A) has (or, at the time of his or her death, had) been 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; or

(B) has (or, at the time of his or her death, had) a citizen parent who has been 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.

(3) The child is under the age of eighteen years.

(4) The child is residing outside of the United States in the legal and physical custody of the applicant (or, if the citizen parent is deceased, an individual who does not object to the application).

(5) The child is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.

(b) Upon approval of the application (which may be filed from abroad) and, except as provided in the last sentence of section 337(a), upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this Act of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the Attorney General with a certificate of citizenship.

(c) Subsections (a) and (b) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1). (Emphasis added)

Section 101(b)(1) of the Act states, in pertinent part that:

(b)(1) The term "child" means an unmarried person under twenty-one years of age who is -

. . . .

(E) (i) a child adopted while under the age of sixteen years . . . . (Emphasis added).

Because the applicant was not under the age of 16 when he was adopted on April 18, 2001, the district director concluded that he did not meet the statutory requirements for acquiring a certificate of citizenship under section 322 of the Act. The district director's conclusion that the applicant does not meet the definition of "child" as set forth in section 101(b)(1) is correct. However, section 322 of the Act applies only to children born and residing outside of the United States. The district director erred in applying section 322 of the Act to the applicant's case since the record indicates that the applicant is residing permanently in the United States. The provisions of section 320 of the Act, 8 U.S.C. § 1431 should thus have been applied to the applicant's case.

Section 320 of the Act, as amended by the Child Citizenship Act of 2000 (CCA), allows a child born outside of the United States, but residing in the U.S. to automatically become a citizen of the United States upon the fulfillment of certain conditions. The CCA benefits all persons who have not yet reached their 18th birthday as of February 27, 2001. Although the applicant was not yet 18-years-old on February 27, 2001, section 320 also requires the applicant to satisfy the definition of "child" as set forth in section 101(b)(1) of the Act. Because the applicant does not satisfy the requirements applicable to adopted children under section 101(b)(1) of the Act, he is ineligible for the benefits of the CCA. The district director's error is therefore found to be harmless.

Section 320 of the Act states in pertinent part:

> (a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:
>
> > (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
> > (2) The child is under the age of eighteen years.
> > (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.
>
> (b) Subsection (a) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

Because the applicant was not under the age of 16 when he was adopted, he does not meet the statutory requirements for

acquiring automatic citizenship pursuant to section 320 of the Act.

8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. In this case, the burden has not been met.

ORDER: The appeal is dismissed.