

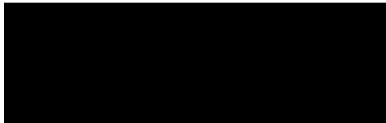


U.S. Department of Justice

Immigration and Naturalization Service

EZ

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE: 

Office: Houston

Date:

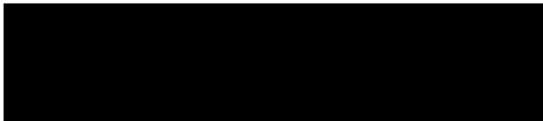
FEB 29 2001

IN RE: Applicant: 

APPLICATION:

Application for Certificate of Citizenship under § 341(a) of the
Immigration and Nationality Act, 8 U.S.C. 1452(a)

IN BEHALF OF APPLICANT:



PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

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FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Houston, Texas, and is now before the Associate Commissioner for Examinations on appeal. The district director's decision will be withdrawn and the matter will be remanded for further action and the entry of a new decision.

The record reflects that the applicant was born on September 26, 1976 in Mexico. The applicant's father, [REDACTED] was born in Mexico in June 1944 and never had a claim to U.S. citizenship. The applicant's mother, [REDACTED] was born in April 1950 in the United States. The applicant's parents married each other June 1974.

The district director determined the record failed to establish that the applicant's United States citizen parent had been physically present in the United States or one of its outlying possessions for 10 years, at least 5 of which were after age 14, as required under § 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1433, at the time of the applicant's birth. The district director also questioned the birth certificate that the applicant's mother, [REDACTED], submitted.

8 C.F.R. 322.2(a) provides that to be eligible for naturalization under § 322 of the Act, a child on whose behalf an application for naturalization has been filed by a parent who is, at the time of filing, a citizen of the United States, must be unmarried and under 18 years of age, both at the time of application and at the time of admission to citizenship.

The present applicant was over the age of 18 years when the application was filed and he filed it himself. He was not eligible for the benefits of § 322 of the Act when the application was filed, therefore, the district director's decision will be withdrawn and the matter will be remanded to him to consider the application under the provisions of § 301(g) of the Act.

On appeal, the applicant disagreed with the decision and argued that sufficient evidence of the mother's physical presence in the United States was provided. The applicant's representative states that [REDACTED] birth certificate shows that her birth was registered just three weeks after her birth and should not be suspect. The representative discusses other aspects of [REDACTED] physical presence in the United States including her year of birth, the seven years of social security earnings and the year she was baptized and the fact that the applicant is seeking a certificate of citizenship under § 301(g) of the Act, 8 U.S.C. 1401(g).

Montana v. Kennedy, 278 F.2d 68, affd. 366 U.S. 308 (1961), held that to determine whether a person acquired U.S. citizenship at birth abroad, resort must be had to the statute in effect at the time of birth. Section 301(g) of the Act was in effect at the time of the applicant's birth.

Section 301(g) of the Act in effect prior to November 14, 1986 provides, in pertinent part, that 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 10 years, at least 5 of which were after attaining the age 14 years, shall be nationals and citizens of the United States at birth.

The skeletal record contains references that prevent the Associate Commissioner from adjudicating the present appeal at this time.

First, the record reflects that the applicant was issued an immigrant visa and was admitted to the United States on July 1, 1977. Normally, the American Consulate will examine all possible claims to U.S. citizenship prior to issuing an immigrant visa to anyone because United States citizens do not need visas to enter the United States. There is no explanation in the record to show why the applicant had no claim to U.S. citizenship in 1977 when he was issued an immigrant visa but alleges that eligibility now some 24 years later.

Second, the applicant states that his application for naturalization was approved on August 24, 1994 but he was not able to go to the interview as he was in jail. Individuals who are already United States citizens are ineligible to naturalize.

The district director's decision will be withdrawn and the matter will be remanded to him to obtain the applicant's complete Service file, [REDACTED] and to enter a new decision under § 301(g) of the Act based on documentation and evidence contained in that complete file including his alienage at the time he was issued an immigrant visa and at the time he applied for naturalization and whether a determination was made in 1977 and again in 1994 regarding his mother's physical presence in the United States. If that decision is adverse to the applicant, the matter is to be certified to the Associate Commissioner for review supported by the applicant's complete Service file.

ORDER: The district director's decision is withdrawn. The matter is remanded to him for further action according to the foregoing discussion and the entry of a new decision which, if adverse to the applicant is to be certified to the Associate Commissioner for review supported by the complete Service file.