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Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

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

FILE [redacted] Office: Houston Date: AUG 13 2003

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act, 8 U.S.C. § 1431

IN BEHALF OF APPLICANT: Self-represented

PUBLIC COPY

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 Bureau of Citizenship and Immigration Services (Bureau) 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 Acting District Director, Houston, Texas, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant was born on October 4, 1988, in Mexico. The applicant's father, [redacted] was born in Mexico in March 1956 and became a naturalized U.S. citizen on January 18, 1996. The applicant's mother, [redacted] was born in Mexico in December 1953 and never had a claim to United States citizenship. The applicant's parents never married each other. The applicant was lawfully admitted for permanent residence on September 18, 2001. The applicant is seeking a certificate of citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The acting district director reviewed the record and concluded that the applicant did not qualify as a child as that term is defined in section 101(c)(1) of the Act, 8 U.S.C. 1101(c)(1). The acting district director concluded that the applicant was not legitimated prior to her 16th birthday and denied the application accordingly.

On appeal, the applicant's father asserts that his daughter is legitimate based on her birth certificate. Along with a copy of the birth certificate he submits an affidavit in which he and the applicant's mother attest that they are the parents of [redacted] The applicant's father declares that in the near future he will marry the applicant's mother.

Sections 320 and 322 of the Act were amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA benefits all persons who have not yet reached their 18th birthdays as of February 27, 2001. The applicant was 12 years and 4 months old on February 27, 2001. Therefore, she is eligible for the benefits of the CCA.

Section 320(a) of the Act, effective on February 27, 2001, provides, in part, that 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).

The definition of child as used in section 320 is found in section 101(c) of the Act and states in pertinent part:

> The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence of domicile or under the law of the father's residence or domicile...if such legitimation or adoption takes place before the child reaches the age of 16 years.

In *Matter of Reyes*, 16 I&N Dec. 436 (BIA 1978) it was determined that the applicant was not legitimated for INS purposes because his parents had never married. *Matter of Reyes* cited Article 314 of the Constitution of Mexico which provides that children may be legitimated solely by the marriage of their parents. It is noted that the applicant in *Matter of Reyes* was from San Luis, Patosi, Mexico, as is the applicant in the present matter. The evidence in the record does not substantiate the applicant's claim that she was legitimated prior to her sixteenth birthday.

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. The applicant has failed to meet that burden. . Therefore, the appeal will be dismissed.

ORDER: The appeal is dismissed.