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Department of Homeland Security

Bureau of Citizenship and Immigration Services

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

[redacted]

FILE [redacted] Office: Dallas Date: MAY 3 2005

IN RE: Applicant: [redacted]

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

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 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 District Director, Dallas, Texas, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant was born on July 6, 1992, in Mexico under the name [redacted] to an unnamed father. The applicant's mother, [redacted] was born in Mexico in September 1969 and became a naturalized U.S. citizen on December 15, 2001. The applicant's natural parents never married each other. The applicant's mother married [redacted] on July 29, 1995, and the applicant's name was changed pursuant to a court order. He was admitted to the United States on June 16, 1995, as a nonimmigrant child of a fiancée of a U.S. citizen (K-2). A Memorandum for Creation of Record of Lawful Permanent Residence was approved on October 6, 1995. 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 district director reviewed the record and concluded that the applicant failed to satisfy the requirements of section 320 of the Act because he failed to meet the definition of the term "child" contained in section 101(c) of the Act, 8 U.S.C. § 1101(c) as used in title III.

The district director also concluded that the applicant failed to derive U.S. citizenship under section 321 of the Act, 8 U.S.C. § 1432, because the applicant's mother naturalized after it was repealed on February 26, 2001.

On appeal, the applicant's mother states that the Bureau lost her file and had to reschedule her citizenship interview three times. She states that the Bureau is responsible for her not becoming a U.S. citizen before the law changed and asks that her son be grand-fathered under the old law.

Sections 320 of the Act was 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.

Although the applicant was 8 years on February 27, 2001, he is not eligible for the benefits of the CCA because stepchildren and children born out of wedlock who have not been legitimated are not included in the definition of the term "child" as used in Title III. Therefore, unless such children are adopted or legitimated, they will not be eligible for benefits under the CCA.

The applicant also fails to qualify under former section 321 of the Act because his mother naturalized after that section of the Act was repealed and there is no provision for grand-fathering under this law.

Pursuant to 8 C.F.R. § 341.2(c), 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.

This decision is without prejudice to the applicant's seeking U.S. citizenship through normal naturalization procedures by filing an Application for Naturalization on Form N-400 with a Service office having jurisdiction over his place of residence.

ORDER: The appeal is dismissed.