

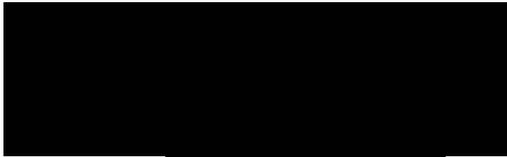
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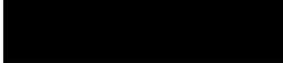
U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

EG



FILE:



Office: DALLAS, TX

Date:

JUL 29 2008

IN RE: Applicant: ISIDRO RODRIGUEZ ALANIS

APPLICATION: Application for Certificate of Citizenship pursuant to Section 322 of the Immigration and Nationality Act, 8 U.S.C. § 1433

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.

A handwritten signature in black ink that reads "Robert P. Wieman".

Robert P. Wieman, Chief  
Administrative Appeals Office

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

The record reflects that the applicant was born on July 21, 1970 in Mexico. The applicant's mother, [REDACTED] also born in Mexico, acquired U.S. citizenship at birth. The applicant's father, [REDACTED] is a lawful permanent resident of the United States and a citizen of Mexico. The applicant's parents married on October 10, 1964 in Mexico. The applicant was admitted to the United States as a lawful permanent resident on August 26, 1987, when he was 17 years old. The applicant seeks a certificate of citizenship through the U.S. citizenship of his mother or his paternal grandparents.

The field office director denied the applicant's Form N-600, Application for Certificate of Citizenship, because the record failed to establish that [REDACTED] had been physically present in the United States for at least ten years prior to his birth, as required by section 301(g) of the Immigration and Nationality Act (the Act). *Decision of the Field Office Director*, dated November 6, 2007

On appeal, counsel for the applicant states that the field office director's denial was based solely on the documentation related to [REDACTED]. She asserts that the field office director failed to consider the applicant's eligibility for citizenship through his U.S. citizen grandmother who was physically present in the United States from her birth until at least 1932 and from 1964 until her death in 1993. Counsel states that section 322 of the Act allows for the acquisition of citizenship through a U.S. citizen grandparent when the U.S. citizen parent does not have the required physical presence in the United States. She further notes that the applicant previously submitted the Form N-600/N-643 Supplement A, Application for Transmission of Citizenship Through a Grandparent, along with evidence of his grandmother's presence in the United States. *Form I-290B, Notice of Appeal or Motion*, dated December 5, 2007.

The AAO now turns to the evidence of record and the extent to which it establishes the applicant's eligibility for a certificate of citizenship.

The applicant seeks to establish his claim to citizenship under the requirements of former section 322 of the 1952 Immigration and Nationality Act (1952 Act). Although these requirements were amended by the Child Citizenship Act of 2000 (CCA), effective as of February 27, 2001, any person who would have acquired citizenship under them prior to February 27, 2001 may apply for a certificate of citizenship at any time. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

Former section 322 of the 1952 Act, as amended, provided in pertinent part that:

(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.

...

(5) If the citizen parent has not 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-

(A) the child is residing permanently in the United States with the citizen parent, pursuant to a lawful admission for permanent residence, or

(B) a citizen parent of the citizen parent 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.

(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 the physical presence requirement for ██████████ under former section 322 of the Act differs significantly from that set forth in section 301(g) of the Act. Therefore, prior to addressing counsel's claim that the applicant has acquired U.S. citizenship through his maternal grandmother, the AAO will again consider whether the record provides sufficient evidence to establish that ██████████ although not physically present in the United States for ten years prior to the applicant's birth, lived here for at least five years prior to the applicant's 18<sup>th</sup> birthday.<sup>1</sup>

The record offers the following documentary evidence of ██████████'s presence in the United States: the applicant's Texas school records for the 1985-1986 school year signed by ██████████ at six week intervals; Ms. ██████████ certificate of citizenship issued on February 24, 1986, which shows her residence as Weslaco, Texas; Ms. ██████████ undated social security card; her Texas voter registration cards for the periods April 27, 1988 to December 31, 1989, and January 1, 1990 to December 31, 1991; a 1966 Public Health Service x-ray and vaccination card for use on the southwest border that does not identify the bearer or indicate the address of the

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<sup>1</sup> Unlike the provisions of section 301(g) of the Act, which require that a parent's ten years of physical presence be established prior to an applicant's birth, former section 322 required only that its physical presence requirement be satisfied prior to the applicant's 18<sup>th</sup> birthday. See letter from ██████████, INS Examinations Operations Facilitation Program to ██████████ dated December 29, 1995, as discussed in 73 No. 4 Interpreter Releases, 115.

bearer; a birth certificate for [REDACTED] daughter, [REDACTED] who was born on January 24, 1968 in California, which lists [REDACTED] as living in Maywood, California; a 1968 billing record from Lincoln Hospital in Los Angeles showing Maywood, California as [REDACTED] address; a Texas birth certificate for [REDACTED] son, [REDACTED] born on December 20, 1975, which reports her usual residence as Mexico; a Texas birth certificate for [REDACTED] daughter, [REDACTED] born on December 22, 1985 that does not indicate [REDACTED] address; and 1985-1986 medical charges billed by the Razdan Medical Center in McAllen, Texas to [REDACTED] at a Weslaco, Texas address.

Based on the preceding documentation, the AAO finds the record to reliably establish that [REDACTED] was living in Texas during 1985 and 1986. While the birth certificates for her children born in 1968 and 1975 demonstrate that [REDACTED] was in the United States at the time of their births, they do not prove that she was living in the United States when they were born. As previously noted, the 1975 birth certificate for [REDACTED] son, [REDACTED] states that she was a resident of Mexico at the time of his birth. [REDACTED] voter registration cards are also inconclusive proof of [REDACTED] presence in the United States. Moreover, even if the AAO were to accept the voter registration card issued for the period April 27, 1988 to December 31, 1989 as proof that [REDACTED] was living in Texas during that period, only the three months from April 27, 1988 to July 21, 1988, the date of the applicant's 18<sup>th</sup> birthday, would count toward the five years of physical presence required by section 322 of the Act. Accordingly, the record does not establish that [REDACTED] was physically present in the United States for at least five years prior to the applicant's 18<sup>th</sup> birthday.

The record does, however, demonstrate by a preponderance of evidence, that the applicant's maternal grandmother [REDACTED], was present in the United States for at least five years before the applicant reached the age of 18 years. Documentation submitted by the applicant to establish [REDACTED] physical presence includes: a birth certificate and an amended birth certificate for [REDACTED] that prove she was born in Austin, Texas on March 7, 1908; U.S. census records for the years 1910, 1920 and 1930, which show that in these years an [REDACTED] born about 1909 or 1910, was living in Bastrop, Texas, San Patricio County, Texas and Dallas, Texas respectively; a birth certificate for [REDACTED] daughter, [REDACTED] born on October 3, 1931; a 1972 marriage certificate for [REDACTED] and the applicant's grandfather [REDACTED], showing a Maywood, California address; and a 1984 death certificate for [REDACTED] listing [REDACTED] as his spouse and indicating a Los Angeles address.

Although counsel for the applicant indicates that [REDACTED] family is unaware that she ever resided in Dallas, Texas, the AAO finds [REDACTED] Austin, Texas birth records; the census records that place an [REDACTED] born around 1909-1910, in nearby Bastrop, Texas in 1910 and in San Patricio County in 1920; and the birth certificate for [REDACTED] daughter, which indicates that she was born in San Patricio County in 1931 sufficient to establish that the applicant's maternal U.S. citizen grandmother lived in Texas for more than five years after her 1908 birth and that at least two of these years followed her 14<sup>th</sup> birthday. Therefore, the applicant has satisfied the requirements of section 322(a) of the Act for a certificate of citizenship.

The AAO notes, however, that whether or not the applicant satisfies the requirements set forth in former section 322(a) of the Act, former section 322(b) requires that he also establish that his application for citizenship was approved by Citizenship and Immigration Services (CIS) prior to his 18<sup>th</sup> birthday, and that he have taken an oath

of allegiance prior to turning 18 years of age.<sup>2</sup> The applicant in the present case has not met the requirements set forth in former section 322(b) as CIS did not approved his certificate of citizenship application before he turned 18 years of age on July 20, 1988 and he did not take an oath of allegiance prior to this date. Therefore, the applicant has not established that he is eligible for a certificate of citizenship.

The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant has not met his burden of proof. The appeal will, therefore, be dismissed.

**ORDER:** The appeal is dismissed.

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<sup>2</sup> See letter from E.B. Duarte, INS Examinations Operations Facilitation Program to Phillip Levin, dated December 29, 1995, reprinted in 73 Interpreter Releases, 129