

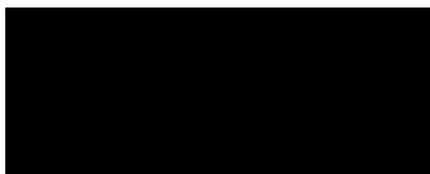
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U.S. Department of Homeland Security  
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U.S. Citizenship  
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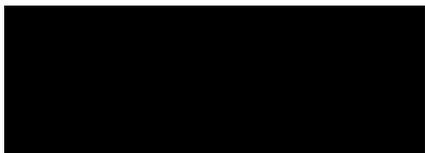
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FILE: [REDACTED] Office: BUFFALO, NEW YORK Date: **JAN 31 2005**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Section 321 of the former Immigration and Nationality Act; 8 U.S.C. § 1432.

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.

*Handwritten signature of Robert P. Wiemann*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Buffalo, New York, 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 March 20, 1981, in France, and that he is a citizen of Germany. The applicant's father, [REDACTED], was born in Iran on August 23, 1956, and he became a naturalized U.S. citizen on January 25, 1993, when the applicant was eleven years old. The applicant's mother, [REDACTED] was born in Germany and she is not a U.S. citizen. The applicant's parents were married on September 5, 1980. They divorced on August 14, 1985, when the applicant was four years old. The applicant obtained United States lawful permanent resident status on January 11, 2000, when he was nineteen years old. The applicant seeks a certificate of citizenship pursuant to section 321 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432, based on the claim that he acquired U.S. citizenship through his father.

The district director found the applicant had failed to establish that he resided in the United States pursuant to a lawful admission for permanent residence prior to his eighteenth birthday, as required by section 321 of the former Act. The application was denied accordingly.

On appeal, counsel asserts that the applicant's father [REDACTED] became a naturalized U.S. citizen in 1993, when the applicant was eleven years old, and that [REDACTED] had custody over the applicant at the time of his naturalization. Counsel asserts that [REDACTED] submitted an application to obtain U.S. lawful permanent resident status for the applicant in 1997, when the applicant was sixteen years old, but that the Immigration and Naturalization Service (Service, now U.S. Citizenship and Immigration Services, CIS) unreasonably delayed approval of the applicant's lawful permanent resident application until after the applicant had turned eighteen. Counsel concludes that CIS should therefore be estopped from denying the applicant's citizenship application based on age.

The AAO notes that the requirements for citizenship set forth in the Immigration and Nationality Act are statutorily mandated, and that an applicant is required to meet statutory provisions in order to obtain U.S. citizenship under the Immigration and Nationality Act (the Act). The AAO therefore finds that the applicant must satisfy the provisions for citizenship as set forth in section 321 of the former Act, and that his eligibility for citizenship under former section 321, is not affected or changed by Service (CIS) processing delays.

The AAO notes further that it is without authority to apply the doctrine of equitable estoppel in the present matter. The jurisdiction of the AAO is limited to that authority specifically granted through the regulations. *See* 8 C.F.R. § 2.1 and 8 C.F.R. § 103.1(f)(3)(iii) (2003). *See also, Matter of Hernandez-Puente*, 20 I&N Dec. 335 (BIA 1991). The AAO finds that estoppel is an equitable form of relief that is available only through the courts, and that the AAO is "without authority to apply the doctrine of equitable estoppel against the Service [CIS] so as to preclude it from undertaking a lawful course of action that it is empowered to pursue by statute and regulation." *See Matter of Hernandez-Puente, supra.*

Section 321 of the former Act states in pertinent part that:

- (a) A child born outside of the United States of alien parents . . . becomes a citizen of the United States upon fulfillment of the following conditions:
  - (1) The naturalization of both parents; or

- (2) The naturalization of the surviving parent if one of the parents is deceased; or
- (3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if the child was born out of wedlock and the paternity of the child has not been established by legitimation; and if
- (4) Such naturalization takes place while such child is under the age of eighteen years; and
- (5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (1) of this subsection, or the parent naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of eighteen years.

The record reflects that the applicant obtained U.S. lawful permanent resident status on January 11, 2000, after he reached the age of eighteen. Accordingly, the AAO finds that the applicant has failed to establish that he meets the requirements set forth in section 321(a)(5) of the former Act. He is therefore not eligible for citizenship under section 321 of the former Act.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish his claimed citizenship by a preponderance of the evidence. *See also* § 341 of the Immigration and Nationality Act, 8 U.S.C. § 1452. Because the applicant has failed to establish that he meets the requirements for citizenship as set forth in section 321 of the former Act, his appeal will be dismissed.

**ORDER:** The appeal is dismissed.