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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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Ez

FILE:

Office: BUFFALO, NY

Date:

AUG 08 2008

IN RE:

Applicant:

APPLICATION:

Application for Certificate of Citizenship under Section 320 of the
Immigration and Nationality Act; 8 U.S.C. § 1430.

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Operations 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 24, 1984 in Colombia. The applicant was admitted to the United States as a lawful permanent resident on February 5, 1993. The applicant's parents are [REDACTED]. They were married in 1990, and divorced in 1994. The applicant's mother was awarded custody of the applicant upon the divorce. The applicant's father naturalized in 1997. The applicant's mother naturalized on May 1, 2002. The applicant presently seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The field operations director denied the applicant's citizenship claim upon finding that his mother naturalized after the applicant's 18th birthday. The director further noted that the applicant did not derive citizenship upon his father's naturalization (pursuant to section 321 of the former Act, 8 U.S.C. § 1432 (repealed))¹, because he was not in his father's legal custody after his parent's divorce. The application was denied accordingly.

On appeal, the applicant maintains that he is entitled to U.S. citizenship because of the delay in processing his mother's naturalization application. The applicant's mother states that she advised USCIS of the applicant's upcoming 18th birthday, but the application was nonetheless delayed. In support of the applicant's claim, counsel cites to *Poole v. Mukasey*, 522 F.3d 259 (2nd Cir. 2008), *reh'g denied*, 527 F.3d 257 (2nd Cir. 2008).

Section 320 and 322 of the Act were amended, and section 321 was repealed, by the Child Citizenship Act of 2000 (CCA). The CCA took effect on February 27, 2001, and benefits all persons who had not yet reached their 18th birthday as of February 27, 2001. Because the applicant was under 18 years of age on February 27, 2001, he meets the age requirement for benefits under the CCA.

Section 320 of the Act, 8 U.S.C. § 1431, states in pertinent part that:

- (a) 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 Section 321 of the former Act, 8 U.S.C. § 1432, provided, in relevant part, that

(a) a child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, 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 said child is under the age of 18 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 (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

- (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 1101(b)(1) of this title.

The record in this case reflects that the applicant's mother became a U.S. citizen after the applicant's 18th birthday. The applicant therefore did not automatically acquire U.S. citizenship under the CCA. The record further indicates that she was awarded custody of the applicant upon her divorce from the applicant's father. Therefore the applicant did not derive U.S. citizenship from his father upon his naturalization in 1997, under section 321 of the former Act, or under the CCA. The AAO therefore finds that the applicant is ineligible for citizenship under the cited provision, or any other provision of the Act.

The applicant claims that delays in processing his mother's case caused him to become 18 prior to her becoming a U.S. citizen. The applicant cites to *Poole v. Mukasey*, supra. The AAO notes that the applicant seems to be requesting that U.S. citizenship be granted on the basis of an equitable estoppel theory. The AAO is without authority to apply the doctrine of equitable estoppel in this or any other case. See *Matter of Hernandez-Puente*, 20 I&N Dec. 335 (BIA 1991) (stating that the AAO, like the Board of Immigration Appeals, 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"). The jurisdiction of the AAO is limited to that authority specifically granted through the regulations at Volume 8 of the Code of Federal Regulations (8 C.F.R.) section 103.1(f)(3)(iii). Moreover, the Second Circuit in *Poole* found that the applicant in that case was statutorily ineligible to derive U.S. citizenship because he was over 18 when his mother naturalized. See *Poole*, 522 F.3d at 265. The AAO notes that the naturalization application at issue in *Poole* was filed two years prior to the applicant turning 18, and that the delay in processing according to the Court was "inexplicable." The applicant's mother's naturalization application, on the other hand, was filed less than one year prior to the applicant's 18th birthday and was processed within the time specified. See Form I-797C, Notice of Action, relating to the applicant's mother's application. The Second Circuit remanded the case to the Board of Immigration Appeals for "consideration of what relief, if any, might be accorded" in light of the "inexplicable delay" in processing his mother's application. *Poole*, 522 F.3d at 266 (emphasis added). The applicant's reliance on *Poole* is therefore misplaced.

The AAO notes that the requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and CIS lacks statutory authority to issue a Certificate of Citizenship when an applicant fails to meet the relevant statutory provisions set forth in the Act. A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 885 (1988). Even courts may not use their equitable powers to grant citizenship, and any doubts concerning citizenship are to be resolved in favor of the United States. *Id.* at 883-84; see also *United States v. Manzi*, 276 U.S. 463, 467 (1928) (stating that "citizenship is a high privilege, and when doubts exist concerning a grant of it ... they should be resolved in favor of the United States and against the claimant"). Moreover, "it has been universally

accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect." *Berenyi v. District Director, INS*, 385 U.S. 630, 637 (1967).

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. In order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is "probably true" or "more likely than not." *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). The applicant failed to meet his burden of proof and did not acquire citizenship under section 320 of the Act, 8 U.S.C. § 1431, or any other provision of the Act. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.