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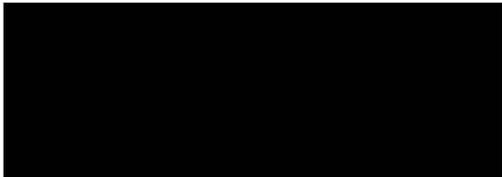
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm 3000
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U.S. Citizenship
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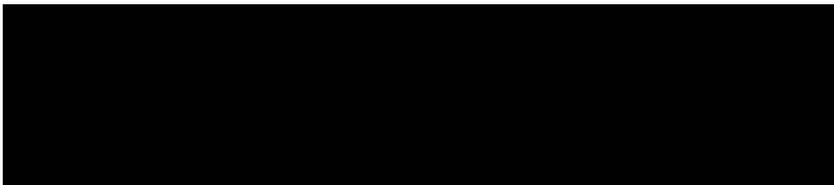


FILE:  Office: PHILADELPHIA, PA Date: **DEC 18 2008**

IN RE: Applicant: 

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

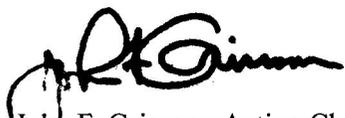
ON BEHALF OF APPLICANT:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Philadelphia, Pennsylvania, 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 5, 1986 in Ukraine. The applicant's mother, [REDACTED] became a U.S. citizen upon her naturalization on September 17, 2003, when the applicant was 17 years old. The applicant was admitted to the United States as an asylee in 1998, and he adjusted his status to that of lawful permanent resident on March 18, 2005 (when he was 18). The applicant presently seeks a certificate of citizenship claiming that he derived U.S. citizenship through his mother.

The field office director, upon finding that the applicant had reached the age of 18 prior to obtaining his lawful permanent residence, concluded that he was ineligible for citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431. The application was accordingly denied.

On appeal, the applicant contends that he was under 18 when he filed his application for adjustment of status and that the application should have been processed before his 18th birthday. He further maintains that the Child Status Protection Act was extended by the courts to apply in cases such as this.

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) 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 in 2003, prior to the applicant's 18th birthday. Nevertheless, the applicant became a lawful permanent resident of the United States after his 18th birthday. Therefore, he did not acquire U.S. citizenship pursuant to section 320 of the Act, 8 U.S.C. § 1431, or any other provision of the Act.

The applicant claims that delays in processing his adjustment of status application caused him to become 18 prior to his admission as a lawful permanent resident. The applicant cites to *Calix-Chavarria v. Attorney General*, No. 05-3447 (3d Cir. 2006), an unpublished, unprecedential decision. The AAO is not bound or persuaded by the

cited decision. The AAO notes that the Third Circuit Court of Appeals specifically designated the decision as not precedential. Additionally, the Third Circuit remanded the matter to the Board of Immigration Appeals and did not resolve the issue of the applicability of the Child Status Protection Act to citizenship cases.¹

The AAO further notes that the applicant seems to be requesting that U.S. citizenship be granted to him 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 appellate jurisdiction of the AAO is limited to that authority specifically granted to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. *See* DHS Delegation Number 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003), with one exception - petitions for approval of schools and the appeals of denials of such petitions are now the responsibility of Immigration and Customs Enforcement.

The AAO notes that the requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and USCIS 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.

¹ The AAO also finds the Third Circuit decision in *Calix-Chavarria* to be inapplicable because the delay in processing the applicant’s adjustment application was not “inexplicable.” The AAO notes that the applicant’s asylee adjustment application was delayed because of the numerical limitations imposed by statute. The record contains no evidence of delay beyond normal processing of his family-based adjustment of status application.