

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



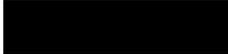
U.S. Citizenship
and Immigration
Services

PUBLIC COPY



E3

FILE:



Office: LOS ANGELES, CA

Date:

NOV 27 2007

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship under 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Los Angeles, California., and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born March 6, 1986 in the Philippines. Her birth certificate indicates that her parents are [REDACTED]. The applicant's parents were never married to each other. The applicant's father became a naturalized U.S. citizen on December 11, 1996, when the applicant was ten years old. The applicant resides in the Philippines. The applicant's reached the age of 18 on March 6, 2004. She presently seeks a certificate of citizenship claiming that she derived U.S. citizenship through her father.

The district director addressed the applicants claim under section 322 of the Act, 8 U.S.C. § 1433. Upon finding that the applicant had already reached the age of 18, the application was denied.

On appeal, the counsel contends that the applicant is eligible to derive citizenship under section 309 of the Act, 8 U.S.C. § 1409. *See Statement of the Applicant on Form I-290B, Notice of Appeal.*

Section 309 of the Act, 8 U.S.C. § 1409, states in pertinent part that:

(a) The provisions of paragraphs (c), (d), (e), and (g) of section 301 . . . shall apply as of the date of birth to a person born out of wedlock if-

- (1) a blood relationship between the person and the father is established by clear and convincing evidence,
- (2) the father had the nationality of the United States at the time of the person's birth,
- (3) the father (unless deceased) has agreed in writing to provide financial support for the person until the person reaches the age of 18 years, and
- (4) while the person is under the age of 18 years-
 - (A) the person is legitimated under the law of the person's residence or domicile,
 - (B) the father acknowledges paternity of the person in writing under oath, or
 - (C) the paternity of the person is established by adjudication of a competent court.

Section 301(g) of the Act, 8 U.S.C. § 1401(g), in turn provides that:

a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was 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 [shall be a citizen of the United States.

Sections 301 and 309 of the Act, 8 U.S.C. §§ 1401 and 1409, govern claims of citizenship acquired at birth. These sections do not pertain to the instant case, as the applicant's father was not a U.S. citizen at the time of the applicant's birth.

Section 322 of the Act, 8 U.S.C. § 1433, governs derivative citizenship claims of children who, like the applicant, were born and are residing outside the United States. Section 322 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 had not yet reached their 18th birthdays as of February 27, 2001. Because the applicant was under 18 years of age on February 27, 2001, she meets the age requirement for benefits under the CCA.

Section 322 of the Act, 8 U.S.C. § 1433, provides that:

(a) A parent who is a citizen of the United States may apply for naturalization on behalf of a child born outside of the United States who has not acquired citizenship automatically under section 320. The Attorney General shall issue a certificate of citizenship to such applicant upon proof, to the satisfaction of the Attorney General, 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 United States citizen parent--

(A) 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; or

(B) has a citizen parent who 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.

(3) The child is under the age of eighteen years.

(4) The child is residing outside of the United States in the legal and physical custody of the applicant [citizen parent] (or, if the citizen parent is deceased, an individual who does not object to the application).

(5) The child is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.

(b) Upon approval of the application (which may be filed from abroad) and, except as provided in the last sentence of section 337(a), upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this Act of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the Attorney General with a certificate of citizenship.

(c) Subsections (a) and (b) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

The record in this case reflects that the applicant reached the age of 18 on March 6, 2004. Her application for a certificate of citizenship was filed on August 29, 2006, when the applicant was 20 years old. Section 322(a)(3) of the Act, 8 U.S.C. § 1433(a)(3) and the regulations promulgated thereunder, at 8 C.F.R. § 322.2(a)(3), require that a certificate of citizenship application be filed, adjudicated, and approved with the oath of allegiance administered before the child's 18th birthday. The AAO therefore finds that the applicant is ineligible for citizenship under the cited provision because she is already 18.

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). Given the fact that the applicant reached the age of 18 prior to the final adjudication of her application, she failed to meet her burden of proof and is not eligible for citizenship under section 322 of the Act, 8 U.S.C. § 1431.

The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.