

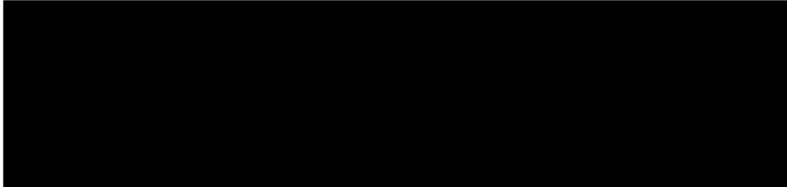
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**U.S. Citizenship
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FILE:

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Date: AUG 10 2007

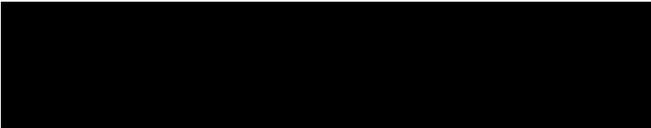
IN RE:

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, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application denied.

The record reflects that the applicant was born on July 16, 1988, in the Philippines. She turned eighteen on July 16, 2006. The applicant's father was born in the United States and he is a U.S. citizen. The applicant's mother is not a U.S. citizen. The applicant seeks a certificate of citizenship pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433, based on the claim that she is entitled to U.S. citizenship through her paternal grandfather.

In a decision dated October 24, 2006, the district director determined that the applicant was ineligible for U.S. citizenship under section 322 of the Act, because she was not under the age of eighteen when her Form N-600K, Application for Citizenship and Issuance of Certificate Under Section 322 (Form N-600K Application) was adjudicated. The application was denied accordingly.

On appeal, the applicant asserts, through counsel, that she was under the age of eighteen, and eligible for a certificate of citizenship when she filed her Form N-600K application in April 2006. The applicant indicates that she did everything possible to ensure that her Form N-600K application would be processed expeditiously, however, U.S. Citizenship and Immigration Services (CIS) mishandling of her case led to a delay in the adjudication of her application, and her ultimate age based ineligibility for citizenship. The applicant asserts, through counsel, that basic principals of fair play require that her Form N-600K application be approved. The applicant asserts further that court decisions have held that the government must act on applications within a reasonable amount of time, and the applicant cites to the Pennsylvania U.S. District Court case, *Harriott v. Ashcroft*, 277 F. Supp. 2d 538 (E.D. Pa 2003) to support her assertion that, under equitable estoppel principals, CIS had a ministerial duty to approve her citizenship application even after she turned eighteen, because CIS failed to act on her application within a reasonable amount of time.

The AAO notes that the appellate jurisdiction of the AAO is limited to that authority specifically granted to it by the Secretary of the United States Department of Homeland Security. See DHS Delegation Number 0150.1 (effective March 1, 2003); see also 8 C.F.R. § 2.1 (2004). The jurisdiction of the AAO is limited to those matters described at 8 C.F.R. § 103.1(f)(3)(E)(iii) (as in effect on February 28, 2003). The AAO has no jurisdiction over unreasonable delay claims arising under the Act or pursuant to constitutional due process claims. See generally, 8 C.F.R. § 103.1(f)(3)(iii) (2003) and 8 C.F.R. § 2.1 (2004). See also *Fraga v. Smith*, 607 F.Supp. 517 (U.S. Dist. Ct. Or. 1985) (relating to federal court jurisdiction over such claims.) The AAO, like the Board of Immigration Appeals, is also without authority to apply the doctrine of equitable estoppel so as to preclude a component part of CIS from undertaking a lawful course of action that it is empowered to pursue by statute or regulation. See *Matter of Hernandez-Puente*, 20 I&N Dec. 335, 338 (BIA 1991). Estoppel is an equitable form of relief that is available only through the courts.

The AAO finds that the requirements for U.S. 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. See *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".) The applicant's eligibility for citizenship under section 322 provisions is thus not affected or changed by CIS processing delays, and in order to obtain a certificate of citizenship the applicant must establish that she fully meets section 322 of the Act requirements.

The applicant, through counsel, additionally requests oral argument before the AAO. Under 8 C.F.R. § 103.3(b), counsel must explain in writing why oral argument is necessary. CIS has sole authority to grant or deny a request for oral argument and will grant such argument only in cases that involve unique factors or issues of law that cannot be adequately addressed in writing. The AAO finds that in the present matter, no cause for oral argument has been shown. The request will therefore be denied.

Section 322 of the Act provides, in pertinent part 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 [now Secretary, Homeland Security, "Secretary"] shall issue a certificate of citizenship to such applicant 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 United States citizen--

(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

(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 . . . 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 [Secretary] with a certificate of citizenship.

The record reflects that the applicant turned eighteen on July 16, 2006, prior to CIS adjudication or approval of her Form N-600K application. The applicant therefore failed to meet the age requirements set forth in section 322 of the Act. Because the applicant does not meet the statutory requirements for citizenship as set forth in section 322 of the Act, the AAO finds it unnecessary to address whether the applicant's paternal grandfather satisfied the physical presence requirements set forth in section 322(a)(2)(B) of the Act.

It is noted that the applicant also failed to establish that she is entitled to citizenship through her U.S. citizen father. "The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth." *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026,1029 (9th Cir. 2000) (citations omitted). The applicant was born on July 16, 1988. Section 301(g) of the Act, therefore applies to her acquisition of citizenship claim.

Section 301(g) of the Act states in pertinent part, that the following shall be nationals and citizens of the United States at birth:

(g) 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

The applicant's Form N-600K application indicates that the applicant's father resided in the United States from the time of his birth in 1963, until he was three years old in 1966. The record contains no evidence to establish that the applicant's father was physically present in the United States for five years prior to the applicant's birth, at least two years of which were after attaining the age of fourteen. The applicant therefore does not meet the requirements for citizenship under section 301(g) of the Act.

The burden of proof is on the claimant to establish her claimed citizenship by a preponderance of the evidence. 8 C.F.R. § 341.2(c). The AAO finds that the applicant has not met her burden of proof in the present matter. The appeal will therefore be dismissed and the application will be denied.

ORDER: The appeal is dismissed. The application is denied.