

U.S. Citizenship
and Immigration
Services



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FILE:



Office: NEW YORK, NY

Date:

MAY 21 2008

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:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, New York, 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 April 18, 1980 in Guyana. The applicant's parents are [REDACTED] and [REDACTED]. The applicant was born out of wedlock. The applicant's mother became a U.S. citizen upon her naturalization on June 29, 1999, when the applicant was 19 years old. The applicant was admitted to the United States as a lawful permanent resident of the United States on May 11, 1991, when he was 11 years old. 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 he acquired U.S. citizenship upon his mother's naturalization.

The district director concluded that the applicant had failed to establish eligibility for citizenship under section 320 of the Act, 8 U.S.C. § 1431, because he was ineligible for benefits under the Child Citizenship Act of 2000 (CCA). The director further found that the applicant had not derived citizenship under section 321 of the former Act, 8 U.S.C. § 1432 (repealed), because he was over the age of 18 when his mother naturalized. Likewise, the director found him ineligible for citizenship under the section 322 of the former Act because he was over the age of 18. The application was denied accordingly.

On appeal, the applicant maintains that he is eligible for citizenship because USCIS "is estopped from denying the application on the ground that the petitioner is over the age of 18 years of age." *See* Statement of the Applicant on Form I-1290B, Notice of Appeal to AAO. The applicant submits a brief in support of his appeal in which he contends, *inter alia*, that his mother's naturalization process was unjustifiably delayed until after he turned 18.

The CCA amended sections 320 and 322 of the Act, and repealed section 321 of the former Act. The CCA is not retroactive. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). The provisions of the Act amended by the CCA apply only to persons who were not yet 18 years old as of February 27, 2001. Because the applicant was over the age of 18 on February 27, 2001, he is not eligible for the benefits of section 320 of the amended Act.

"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 in this case was born in 1980. Therefore, sections 321 and 322 of the former Act apply to this case.

Section 321 of the former Act provided, in pertinent 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.

The AAO finds that the applicant did not derive citizenship under section 321 of the former Act because his mother naturalized when he was 19 years old. Therefore, the applicant does not meet the requirements of section 321(a)(4) of the former Act, 8 U.S.C. § 1432(a)(4).

Section 322 of the former Act provided, in pertinent part, that:

(a) Application of citizen parents; requirements

A parent who is a citizen of the United States may apply to the Attorney General [now the Secretary of Homeland Security, "Secretary"] for a certificate of citizenship on behalf of a child born outside the United States. The Attorney General [Secretary] shall issue such a certificate of citizenship 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 child is physically present in the United States pursuant to a lawful admission.
- (3) The child is under the age of 18 years and in the legal custody of the citizen parent.

(b) Attainment of citizenship status; receipt of certificate

Upon approval of the application . . . [and] upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this chapter 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 in this case reflects that the applicant reached the age of 18 on April 18, 1998. His application for a certificate of citizenship was filed on or about March 17, 2003, when the applicant was 22 years old. Section 322(a)(3) of the former Act, 8 U.S.C. § 1433(a)(3), and the regulations promulgated thereunder, require that a certificate of citizenship application be filed, adjudicated, and approved with the oath of allegiance administered before the applicant's 18th birthday. The applicant is over the age of 18. The AAO therefore finds that the applicant is ineligible for citizenship under the cited provision.

The AAO notes that the applicant maintains that he should be granted citizenship on the basis of an estoppel theory. It is well established 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).

The AAO notes further that it 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 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.

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 in this case has not met his burden and the appeal will therefore be dismissed.

ORDER: The appeal is dismissed.