U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529

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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

EL

FILE: [redacted] Office: MIAMI, FL Date: SEP 21 2007

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under Section 322 of the Immigration and Nationality Act; 8 U.S.C. § 1433.

ON BEHALF OF APPLICANT:

[redacted]

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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant was born on July 1, 1987, in Colombia, and he turned eighteen on July 1, 2005. The record reflects that the applicant's mother was born in Colombia, and that she acquired U.S. citizenship at birth through her U.S. citizen father. The applicant's father is not a U.S. citizen. The record indicates that the applicant became a U.S. lawful permanent resident on November 23, 2004. The applicant filed a Form N-600K, Application for Citizenship and Issuance of Certificate Under Section 322 on May 5, 2005. 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 is entitled to U.S. citizenship through his maternal grandfather.

The district director determined that the applicant was ineligible for U.S. citizenship under section 322 of the Act, because he was not under the age of eighteen when his Form N-600K application was adjudicated. The application was denied accordingly.

On appeal the applicant asserts, through counsel, that he was under the age of eighteen and eligible for a certificate of citizenship when he filed his Form N-600K application in May 2005. The applicant indicates that he made numerous efforts to ensure that his Form N-600K would be processed expeditiously, however, U.S. Citizenship and Immigration Services' (CIS) mishandling of his case led to a delay in the adjudication of his application, and his ultimate age-based ineligibility for U.S. citizenship. The applicant indicates, through counsel, that principles of fair play require that his Form N-600K be approved. The applicant indicates further 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 the assertion that under equitable estoppel principle, CIS has a duty to approve his citizenship application.

The AAO notes that its appellate jurisdiction is limited to that authority specifically granted to the AAO 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), and 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 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). It is noted

that 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 AAO finds that the applicant's eligibility for citizenship under section 322 of the Act is thus not affected or changed by CIS processing delays, and that in order to obtain a certificate of citizenship, the applicant must establish that he fully meets the requirements of section 322 of the Act.

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 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 ....
> >
> > (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 1, 2005, prior to CIS adjudication or approval of his Form N-600K. The applicant therefore failed to meet the age requirements set forth in section 322(a)(3) and section 322(b) of the Act. The AAO notes further that the applicant obtained status as a U.S. lawful permanent resident in November 2004. The applicant thus also failed to meet the temporary presence in the United States requirement set forth in section 322(a)(5) of the Act. Because the applicant does not meet the statutory requirements contained in section 322 of the Act, the AAO finds it unnecessary to address whether the applicant's maternal 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 he is entitled to citizenship through his U.S. citizen mother. "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 1, 1987. Section 301(g) of the Act, therefore applies to his 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 evidence in the record fails to establish that the applicant's mother meets the U.S. physical presence requirements contained in section 301(g) of the Act, and the applicant's Form N-600K application indicates that the applicant's mother was not 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 his or 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 his 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.[1]

[1] The present decision is without prejudice to the applicant's filing a Form N-400, Application for Naturalization pursuant to section 316 of the Act, 8 U.S.C. § 1427.