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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: DETROIT, MI Date: AUG 13 2009

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under section 201(g) Nationality Act of 1940; 6 U.S.C. § 601(g).

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.

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).

Ellen C. Johnson

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Detroit, Michigan, 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 December 23, 1946 in Mexico. The applicant's mother, [redacted], was a native-born U.S. citizen, born in Michigan on February 22, 1930. The applicant's father, [redacted] was a Mexican citizen. The applicant's parents were married in 1945 in Mexico. The applicant's mother was remarried in 1960, in Michigan, to [redacted], a U.S. citizen. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his mother or, alternatively, through his step-father.

The field office director denied the applicant's citizenship claim upon finding that the applicant's mother could not meet the statutory residence requirement in section 201(g) Nationality Act of 1940 (the Nationality Act), 6 U.S.C. § 601(g). The director further found that the statute did not permit acquisition or derivation of U.S. citizenship through a step-parent. The application was denied accordingly.[1]

On appeal, the applicant, through counsel, maintains that it is unconstitutional to deny him citizenship only because his mother was 16 at the time of his birth, and therefore incapable of fulfilling the statutory residence requirement. *See* Appeal Brief at 4-5. The applicant also claims that the applicable law should be section 301(g) of the Immigration and Nationality Act (the Act), as amended, 8 U.S.C. § 1401(g). Lastly, the applicant claims that he derived U.S. citizenship through his step-father under section 322 of the Act, 8 U.S.C. § 1433.

"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 in 1946. The Immigration and Nationality Act went into effect on December 24, 1952. The Nationality Act is therefore applicable in this case.

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[1] The AAO notes that this is the applicant's second Form N-600, Application for Certificate of Citizenship. The applicant's first Form N-600, was denied on the ground that the applicant did not acquire U.S. citizenship through his mother. **An appeal of that denial was dismissed by this office on September 4, 2004.** Pursuant to the regulations, at 8 C.F.R. § 341.6, a second Form N-600 in these circumstances must be rejected and the applicant advised to file a Motion to Reopen or Reconsider. The applicant's second Form N-600 will be considered as a motion as the applicant makes the additional claim that he derived U.S. citizenship through his step-father. For the reasons stated in this decision, the applicant does not have a valid claim to U.S. citizenship. The motion was therefore properly dismissed by the director, and the appeal therefrom will be likewise dismissed.

Section 201(g) of the Nationality Act states that:

> A person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who, prior to the birth of such person, has had ten years residence in the United States or one of its outlying possessions, at least five of which were after attaining the age of sixteen years, the other being an alien . . .

The applicant must thus establish that his mother resided in the United States for 10 years prior to December 1946 (the applicant's date of birth), five of which were after February 1946 (the applicant's mother's 16th birthday). Because the applicant's mother was only 16 years old when the applicant was born, she cannot establish the required residence to transmit U.S. citizenship to the applicant.

The applicant, through counsel, claims that the statute is unconstitutional and leads to an absurd result. The jurisdiction of the AAO is limited to that authority specifically granted through the regulations at Volume 8 of the Code of Federal Regulations (8 C.F.R.) section 103.1(f)(3)(iii). Constitutional or equitable claims are not within the jurisdiction of the AAO. *See generally,* 8 C.F.R. § 103.1(f)(3)(iii) (2003) and 8 C.F.R. § 2.1 (2004). *See also generally, Fraga v. Smith,* 607 F.Supp. 517 (D.Or. 1985) (relating to federal court jurisdiction over such claims).

The AAO notes, moreover, that the requirements for citizenship are statutorily mandated by Congress, and that USCIS (and the courts) lack the authority to grant a citizenship claim 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"). The applicant's mother was 16 when the applicant was born. She therefore could not fulfill the residence requirement of the Nationality Act, and did not transmit U.S. citizenship to the applicant under section 201(g) of the Nationality Act.

Alternatively, the applicant claims that he derived U.S. citizenship through his step-father. In this regard, the AAO notes that the definition of "child" applicable to the citizenship and nationality provisions in Title III of the Act is contained in section 101(c) of the Act, 8 U.S.C. § 1101(c), not section 101(b). Section 101(c) of the Act provides as follows:

> ...an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United Sates or elsewhere, and except

> as otherwise provided in section 320 and 321 of the title III, a child adopted in the United States, if such legitimation or adoption takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating or adopting parent or parents at the time of such legitimation or adoption.[2]

In contrast to section the section 101(b) definition, the definition of child in section 101(c) of the Act, and section 102(h) of the Nationality Act, applicable to citizenship and nationality claims, do not include step-children. It is well-established that, except when specifically provided otherwise, there must be a blood relationship between the citizen parent and the child seeking to acquire citizenship at birth. See 8 Whiteman, Digest of International Law, at 119 (1967) explaining acquisition of U.S. nationality at birth through *jus soli* or *jus sanguinis* under the INA). Black's Law Dictionary defines "*jus sanguinis*" as "the right of blood. The principle that a person's citizenship is determined by the citizenship of the parents." The Act specifically provides for acquisition of U.S. citizenship through adoptive parents in certain circumstances. No provision of law provides for the acquisition or derivation of citizenship in cases where, as here, the parent is not the natural or adoptive parent, and the parental relationship is established *de facto* or by court order. The applicant in the present case is not the natural or adoptive child of [redacted], and is therefore ineligible to acquire or derive citizenship through him under the Act.[3]

The AAO notes again that "[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." *Fedorenko v United States*, 449 U.S. 490, 506 (1981). According to the U.S. Supreme Court "it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect. This Court has often stated that doubts "should be resolved in favor of the United States and against the claimant." *Berenyi v. District Director*, 385 U.S. 630, 671 (1967).

Pursuant to 8 C.F.R. § 341.2(c), 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.

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[2] Section 102(h) of the Nationality Act provided the following definition of "child" for citizenship and nationality purposes:

> [t]he term child includes a child legitimated under the law of the child's residence or domicile, whether in the United States or elsewhere; also a child adopted in the United States, provided such legitimation or adoption takes place before the child reached the age of sixteen years and the child is in the legal custody of the legitimating or adopting parent or parents.

[3] The AAO notes further that the there is no evidence in the record that the applicant was admitted as a lawful permanent resident.

1989). The applicant is statutorily ineligible for U.S. citizenship under section 201(g) of the Nationality Act, or any provision of the Act.[4] The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.

[4] Sections 320, 321 and 322 of the Act, 8 U.S.C. §§ 1431, 1432 and 1433, were 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 over the age of 18 years on February 27, 2001, he does not meet the age requirement for benefits under the CCA. The AAO notes that the derivative citizenship provisions in effect prior to 2001 required the "naturalization" of the applicant's parents and therefore did not apply to children of native-born U.S. citizens.