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

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW YORK, NY Date: NOV 17 2009

IN RE: [redacted]

APPLICATION: Application for Certificate of Citizenship under Section 321 of the former Immigration and Nationality Act; 8 U.S.C. § 1432 (2000).

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).

Perry Rhew
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 June 17, 1981 in Jamaica. He attained the age of 18 on June 17, 1999. The applicant's mother became a U.S. citizen upon her naturalization on June 14, 2000, when the applicant was 18. The applicant's parents were not married to each other. The applicant was admitted to the United States as a lawful permanent resident on November 11, 1990. He presently seeks a certificate of citizenship claiming that he derived U.S. citizenship upon his mother's naturalization.

The district director rejected the applicant's claim of citizenship under section 321 of the former Immigration and Nationality Act (the Act), 8 U.S.C. § 1432 (2000), in relevant part, on the ground that the applicant was over 18 years old when his mother naturalized. The district director further noted that the applicant was ineligible for citizenship because he could not establish that his parents were legally separated (given that they were never married) as required by section 321(a)(3) of the former Act.

On appeal, the applicant, through counsel, claims that it is "unfair" to deny his claim given his ineligibility was caused by the delay in adjudicating his mother's naturalization application. *See* Statement of Counsel on Form I-290B, Notice of Appeal to the AAO. In support of her claim, counsel cites *Poole v. Mukasey*, 522 F.3d 259 (2d Cir. 2008).

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. *See Chau v. Immigration and Naturalization Service,* 247 F.3d 1026, 1029 (9th Cir. 2000) (citations omitted). The applicant was born in 1981. He was over 18 years old when the Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), went into effect on February 27, 2001. *See* CCA § 104; *Matter of Rodriguez-Tejedor,* 23 I&N Dec. 153 (BIA 2001) (holding that the CCA applies only to persons who were not yet 18 years old as of February 27, 2001). Section 321 of the former Act, 8 U.S.C. § 1432 (2000), is therefore applicable to this case.

Section 321 of the former Act, 8 U.S.C. § 1432 (2000), 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 record reflects that the applicant was over the age of 18 when his mother naturalized. Therefore, the AAO finds that the applicant is not eligible for citizenship pursuant to the section 321 of the former Act, 8 U.S.C. § 1432 (2000).

The applicant states that it is "unfair" that he should not be granted citizenship, when delays in adjudication of his mother's naturalization caused him to age out. The applicant thus appears to be seeking to gain U.S. citizenship by application of the doctrine of equitable estoppel. The AAO notes first that it is without authority to apply the doctrine of equitable estoppel in this or any other case. 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." *Matter of Hernandez-Puente,* 20 I&N Dec. 335, 338 (BIA 1991). 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) (as in effect on Feb. 28, 2003) and subsequent amendments.

The applicant's reliance on *Poole v. Mukasey, supra*, is misplaced. The Second Circuit Court of Appeals in *Poole*, in denying *en banc* rehearing, "recognized that Poole's claim 'appears to fail to satisfy the timing requirement of subsection 1432(a)(4)'" and that the case was "remanded so that the BIA could consider whether the delay in processing the mother's application, submitted when Poole was sixteen, '*might* be some basis for relieving Poole' of the timing requirement." *See Poole v. Mukasey*, 527 F.3d 257, 259 (2d Cir. 2008) (emphasis in original, internal citations omitted). The Court did not, as the applicant suggests, find that a delay in adjudication of a naturalization application is inherently unfair or that there is any authority to grant a citizenship claim on that basis.

It is well established that the requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and United States Citizenship and Immigration Services (USCIS) 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). The applicant was over the age of 18 when his mother naturalized and is therefore statutorily ineligible to derive U.S. citizenship from her. He therefore cannot meet his burden of proof and his appeal will be dismissed.

ORDER: The appeal is dismissed.