



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: OCT 30 2013

OFFICE: RALEIGH-DURHAM, NC

FILE: [REDACTED]

IN RE: [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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Form N-600K, Application for Citizenship and Issuance of Certificate Under Section 322 (Form N-600K) was denied by the Field Office Director, Raleigh-Durham, North Carolina (director), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Canada on July 30, 1993, to unmarried parents. The applicant's mother was born in the United States on September 15, 1971, and she is a U.S. citizen. The applicant's father is not a U.S. citizen. The applicant's maternal grandfather was born in the United States on June 20, 1946, and was a U.S. citizen. The record reflects that the applicant filed a Form N-600K on July 14, 2011. He seeks a Certificate of Citizenship pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

In a decision dated December 19, 2011, the director determined that the applicant was ineligible for derivative citizenship under section 322 of the Act, because he was not under the age of 18 when his Form N-600K application was adjudicated, and he was not able to take the oath of allegiance prior to his 18th birthday.¹ The application was denied accordingly.

On appeal, the applicant asserts that he initially submitted his Form N-600K in May 2010, and that he was under the age of 18 and eligible for citizenship under section 322 of the Act when he filed his Form N-600K application. He indicates that U.S. Citizenship and Immigration Services (USCIS) unreasonably delayed the processing of his Form N-600K, and he asks that his application be approved. No new evidence is submitted on appeal.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d. Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

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 AAO has no jurisdiction over unreasonable delay claims arising under the Act or pursuant to equitable claims. 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.)

It is well established that the requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and 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). Where an applicant has failed to establish statutory eligibility for U.S. citizenship, a certificate of citizenship cannot be issued. See *Fedorenko v. U.S.*, 449 U.S. 490, 506 (1981).

Section 322 of the Act applies to children born and residing outside of the United States, and provides, in pertinent part, that:

¹ The applicant turned 18 on July 30, 2011, 16 days after the filing date contained on the applicant's Form N-600K.

(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 [Secretary] shall issue a certificate of citizenship to such applicant upon proof, to the satisfaction of the [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 [citizen parent]

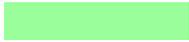
(5) The child is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.

(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 [Secretary] with a certificate of citizenship.

Here, the record reflects that the applicant turned 18 on July 30, 2011, prior to USCIS adjudication of his Form N-600K application. The applicant therefore fails to meet the age requirements set forth in sections 322(a)(3) and 322(b) of the Act. Because the applicant is no longer under the age of 18, we do not reach the issues of whether he is residing outside of the United States in the legal and physical custody of his U.S. citizen mother, or whether his mother or maternal grandfather met the physical presence requirements set forth in section 322(a)(2) of the Act.

The applicant bears the burden of proof in these proceedings to establish her claimed citizenship by a preponderance of the evidence. 8 C.F.R. § 341.2(c). The applicant has not met his burden of proof in the present matter. The appeal will therefore be dismissed.

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NON-PRECEDENT DECISION

ORDER: The appeal is dismissed.