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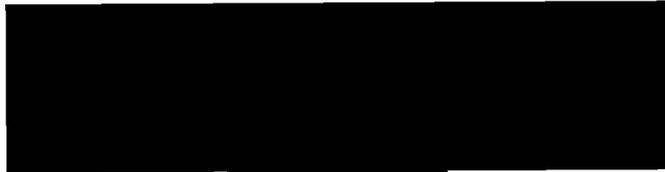
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEW YORK, NY

JUL 03 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:



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 in England on August 8, 1989. The applicant's mother, acquired U.S. citizenship at birth through her mother, a native-born U.S. citizen. The applicant seeks a Certificate of Citizenship pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The district director determined that the applicant had failed to establish eligibility for citizenship under section 322 of the Act because he was over 18 years of age. The application was denied accordingly.

On appeal, the applicant, through counsel, claims that he should be granted citizenship *nunc pro tunc*. The applicant maintains that he filed his application months before his 18th birthday, and that his citizenship certificate should be issued based on equitable estoppel. The applicant cites to *Harriot v. Ashcroft*, 233 F.Supp. 2d 538 (E.D.PA 2003), in support of his claim.

Section 322 of the Act, 8 U.S.C. § 1433, was 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 under the age of 18 on February 27, 2001, he meets the age requirement for benefits under the CCA.

Section 322 of the Act, 8 U.S.C. § 1433, applies to children born and residing outside of the United States, and provides 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 shall issue a certificate of citizenship to such applicant upon proof, to the satisfaction of the Attorney General, 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 [citizen parent] (or, if the citizen parent is deceased, an individual who does not object to the application).

(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, except as provided in the last sentence of section 337(a), 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 with a certificate of citizenship.

(c) Subsections (a) and (b) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

The record in this case reflects that the applicant reached the age of 18 on August 8, 2007. His application for a certificate of citizenship was filed on or about January 26, 2007, when the applicant was 17 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 applicant claims that delays in processing his case caused him to become 18 prior to the adjudication of his application. The applicant maintains that he flagged his case as an "ageout" and expected it to be processed expeditiously.

The AAO notes that the applicant seems to be requesting that U.S. citizenship be granted on the basis of an equitable estoppel theory. The AAO 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 Board of Immigration Appeals, is "without authority to apply the doctrine of equitable estoppel against the Service [CIS] so as to preclude it from undertaking a lawful course of action that it is empowered to pursue by statute and regulation").¹ 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 February 28, 2003.

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

¹ The applicant's reliance on *Harriot v. Ashcroft*, *supra*, is misplaced. The AAO is not bound by the decision of a federal district court in the Eastern District of Pennsylvania. Additionally, *Harriot* is clearly distinguishable from the instant case because, among other reasons, the application in that case was filed over a year prior to the applicant's 18th birthday. The AAO notes that the applicant in this case filed his application only months before his 18th birthday, when he could have applied as early as February 27, 2001, the effective date of the CCA.

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 AAO concludes that the applicant has failed to meet his burden to establish, by a preponderance of the evidence, that he can derive U.S. citizenship through a U.S. citizen parent. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.