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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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EI

FILE:

Office: CLEVELAND, OH

Date: **MAR 09 2009**

IN RE:

Applicant:

APPLICATION:

Application for Certificate of Citizenship under former 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.

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).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Cleveland, Ohio, 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 November 15, 1967 in Honduras. He was adopted in Honduras by a native-born U.S. citizen in 1980, and readopted in the United States (in Arkansas) in 1981. The applicant was admitted to the United States as a lawful permanent resident on February 21, 1981. The applicant attained the age of 18 on November 15, 1985. The applicant's adoptive mother submitted an Application to File Petition for Naturalization in Behalf of Child on or about January 12, 1982.

The field office director considered the applicant's citizenship claim under sections 301(c), 320, 321 and 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1401(c), 1431, 1432 and 1433. The director concluded that the applicant was ineligible for citizenship under sections 301(c), 320 or 321 of the Act because his adoptive mother was a native-born U.S. citizen who did not "naturalize" as required by the law (as it existed at the time). Upon finding that the applicant had already reached the age of 18, the director found the applicant ineligible for citizenship under section 322 of the former Act. The application was accordingly denied.

On appeal, the applicant, through counsel, contends that he derived citizenship from his adoptive mother under the law as it existed in 1981 (at the time of filing of his application). *See* Form I-290B, Notice of Appeal to the AAO. Counsel indicates that a brief or additional evidence will be submitted within 30 days. *Id.* The AAO has not received any such brief or additional evidence to date.

"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 in this case was born in 1967. Section 322 of the former Act, 8 U.S.C. § 1433, is the applicable law in this case.¹

Sections 320 and 321 of the former Act relate to the derivation of U.S. citizenship upon the naturalization of a parent. These sections are inapplicable to the applicant's case because his mother is a native-born U.S. citizen. Section 322 of the former Act, 8 U.S.C. § 1433, provides, in relevant part, that:

(a) A child born outside of the United States, one or both of whose parents is at the time of petitioning for the naturalization of the child, a citizen of the United States whether by birth or naturalization, may be naturalized if under the age of eighteen

¹ The Child Citizenship Act of 2000 amended sections 320 and 322 of the Act, 8 U.S.C. §§ 1431 and 1433, and repealed section 321 of the Act, 8 U.S.C. § 1432. Section 322 of the Act 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 over 18 years of age on February 27, 2001, he does not meet the age requirement for benefits under the CCA.

years and not otherwise disqualified from becoming a citizen . . . upon compliance with all the provisions of this title.

Section 322 of the former Act, which applies equally to children adopted while under the age of 16, requires further that the child be residing permanently in the United States with the citizen parent pursuant to a lawful admission for permanent residence.

The record in this case reflects that the applicant reached the age of 18 on November 15, 1985. Section 322(a) of the Act, 8 U.S.C. § 1433(a)(3) and the regulations promulgated thereunder, at 8 C.F.R. §§ 322.2(a)(1) and 322.5, 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 AAO therefore finds that the applicant is ineligible for citizenship under the cited provision because he is already beyond 18 years of age.

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 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); *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). Given the fact that the applicant is over the age of 18, he has failed to meet his burden of proof and is not eligible for citizenship under section 322 of the former Act, 8 U.S.C. § 1431. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.