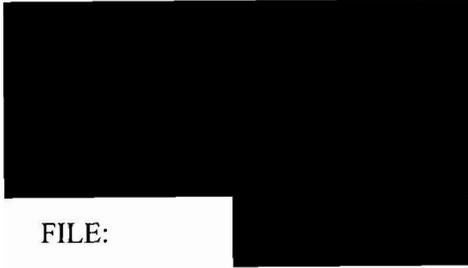




U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
invasion of personal privacy**



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FILE:

Office: PHILADELPHIA, PA Date:

MAY 16 2007

IN RE:

Applicant:



APPLICATION:

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting District Director, Philadelphia, Pennsylvania 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 September 5, 1960 in the Dominican Republic. He attained the age of 18 on September 5, 1978. The applicant's father became a naturalized U.S. citizen on January 10, 1979, when the applicant was 18 years of age. The applicant's mother became a U.S. citizen on January 26, 1996, when the applicant was 35 years old. The applicant's parents were married on May 19, 1966, and divorced on September 25, 1975. The applicant immigrated to the United States on August 11, 1966.

The acting district director rejected the applicant's claim of citizenship under section 321 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432, on the ground that the applicant was over 18 years old when his father naturalized. The acting district director further noted in her decision that the applicant's parents appeared to remain married until his father's death in 1999.

Section 321 of the former Act 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.

8 U.S.C. § 1432. The record reflects that the applicant was over the age of 18 when either of his parents 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.

The AAO also notes that the acting district director properly questioned whether the applicant's parents were indeed divorced in 1975, given that his mother appears in his father's 1999 death certificate as his wife. The AAO further notes that the record contains an attestation executed by the mother in 2005 suggesting that she separated from her husband in 1977.

The applicant claims that delays in processing his father's naturalization caused his father to become a U.S. citizen after the applicant's 18th birthday. The applicant thus seeks 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 appeal case. The AAO, like 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." *Matter of Hernandez-Puente*, 20 I&N Dec. 335 (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). Estoppel is an equitable form of relief that is available only through the courts.

The AAO notes further that its appellate jurisdiction is limited, and that it has no jurisdiction over unreasonable delay claims arising under the Act or pursuant to constitutional due process 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.)

Moreover, the AAO finds that the requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and that 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). 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). Given the fact that the applicant's parents were naturalized after the applicant attained the age of 18, whether or not the parents were divorced at the time, he did not derive citizenship under section 321 of the former Act, 8. U.S.C. § 1432. The AAO concludes that the applicant is ineligible for citizenship.

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. The applicant in the present case has not met his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.