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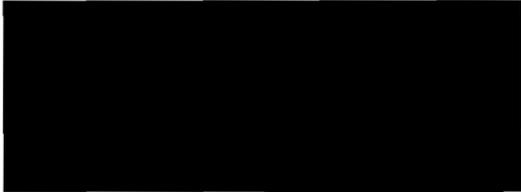
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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529



**U.S. Citizenship  
and Immigration  
Services**

**E2**



FILE: [Redacted] Office: NEW YORK Date: **APR 03 2009**

IN RE: Applicant: [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:**

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, as required by 8 C.F.R. 103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom  
Acting 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 April 18, 1990 in Ireland. His mother, [REDACTED] is a native-born U.S. citizen. She was married in Ireland in 1988. The applicant resides in Ireland with his mother. The applicant reached the age of 18 on April 18, 2008. He presently seeks a certificate of citizenship claiming that he derived U.S. citizenship pursuant to section 322 of the Act, 8 U.S.C. § 1433.

The district director found that the applicant had already reached the age of 18 and therefore concluded that he was ineligible to derive citizenship under section 322 of the Act. The application was accordingly denied.

On appeal, the applicant contends that he filed his application for a certificate of citizenship in advance of his 18<sup>th</sup> birthday, and in accordance with the official instructions. *See* Statement of the Applicant on Form I-290B, Notice of Appeal. The applicant further notes that his siblings have been accorded U.S. citizenship.

Section 322 of the Act, 8 U.S.C. § 1433, governs derivative citizenship claims of children who, like the applicant, were born and are residing outside the United States. 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 under 18 years of age on February 27, 2001, he meets the age requirement for benefits under the CCA.

Section 322 of the Act, 8 U.S.C. § 1433, 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 April 18, 2008. His application for a certificate of citizenship was filed on or about October 10, 2007, a few months prior to his 18<sup>th</sup> birthday. Section 322(a)(3) of the Act, 8 U.S.C. § 1433(a)(3) and the regulations promulgated thereunder, at 8 C.F.R. § 322.2(a)(3), require that a certificate of citizenship application be filed, adjudicated, and approved with the oath of allegiance administered before the child's 18<sup>th</sup> birthday. The applicant is already over the age of 18. His application cannot be adjudicated and approved, and the oath cannot be administered, as required by section 322 of the Act. The applicant is therefore ineligible for citizenship under the cited provision.

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). 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).

The applicant 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 appeal case. The AAO, like the Board of Immigration Appeals, is “without authority to apply the doctrine of equitable estoppel against the Service [USCIS] 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)(as in effect on February 28, 2003). 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 delay claims arising under the Act or 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.)

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 reached the age of 18 prior to the final adjudication of his application, he is not eligible for citizenship under section 322 of the Act, 8 U.S.C. § 1431.

The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.