



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: PHILADELPHIA, PA

Date: **DEC 03 2009**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (2000).

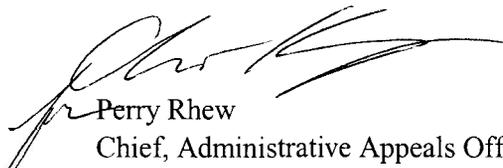
ON BEHALF OF APPLICANT:

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).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The applicant had previously filed an application, which was denied. An appeal of the denial was dismissed. The instant application will be rejected but considered as a motion to reconsider. The motion will be dismissed.

The record reflects that the applicant was born on December 12, 1970 in the Philippines. The applicant was born out of wedlock to [REDACTED] and [REDACTED]. The applicant's mother became a U.S. citizen upon her naturalization on February 17, 1989, when the applicant was already 18 years old. The applicant was admitted to the United States as a lawful permanent resident on October 22, 1989, when the applicant was already 18 years old. The applicant seeks a certificate of citizenship claiming that he derived U.S. citizenship upon his mother's naturalization.

At the outset, the AAO notes that the applicant's instant Form N-600, Application for Certificate of Citizenship, is his second such application. The applicant had previously filed a Form N-600 which was denied on February 9, 2007. The AAO dismissed an appeal of that application on November 27, 2007.

The regulation, at 8 C.F.R. 341.6, provides, in pertinent part, that

After an application for a Certificate of Citizenship has been denied and the appeal time has run, a second application submitted by the same individual shall be rejected and the applicant instructed to submit a motion for reopening or reconsideration in accordance with 8 C.F.R. § 103.5.

The applicant's instant Form N-600 must therefore be rejected. The AAO finds, however, that it may be considered as a motion to reconsider.¹ The motion will nevertheless be dismissed.

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. *See Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9th Cir. 2000) (citations omitted). The Child Citizenship Act of 2000 (CCA), Pub. L. 106-395, 114 Stat. 1631 (Oct. 30, 2000), amended sections 320 and 322 of the Act, and repealed section 321 of the Act. The provisions of the CCA took effect on February 27, 2001, are not retroactive, and apply only to persons who were not yet 18 years old as of February 27, 2001. *See* CCA § 104. The applicant was born in 1970. Because the applicant was over the age of 18 on February 27, 2001, he is not eligible for the benefits of the amended Act. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Section 321 of the former Act, 8 U.S.C. § 1432 (2000), is therefore applicable to this case.

Section 321 of the former Act, 8 U.S.C. § 1432 (2000), provided, in pertinent part, that:

¹ Although the applicant's instant Form N-600 (and appeal) is not accompanied by new facts or evidence to warrant reopening of his application, he submits new arguments to be addressed upon reconsideration.

(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.

The applicant was over the age of 18 when his mother naturalized and when he was admitted as a lawful permanent resident. The applicant therefore did not derive U.S. citizenship through his mother upon her naturalization.

The applicant claims that delays in processing his mother's naturalization caused her to become a U.S. citizen after the applicant's 18th birthday.² 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 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

² On appeal, the applicant claims that he was born in the United States by virtue of his birth in the U.S. Military Base in Manila, Philippines and, alternatively, that he derived U.S. citizenship because the requirement that the conditions of section 321 of the former Act be fulfilled prior to a child's 18th birthday are not mandatory. See Form I-290B, Notice of Appeal to the AAO. The field office director properly addressed these claims in her decision. A U.S. Military Base is not included in the definition of the United States (or outlying possessions) found in section 101(a)(38) of the Act, 8 U.S.C. § 1101(a)(38). With respect to the applicant's second claim on appeal, the AAO notes that the plain language of section 321 of the Act require that the listed conditions be fulfilled prior to a child's 18th birthday.

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 requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and that 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).

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 applicant was over the age of 18 when his mother naturalized and when he was granted lawful permanent residence. He was therefore statutorily ineligible to derive U.S. citizenship under section 321(a) of the former Act, 8 U.S.C. § 1432(a), and cannot meet his burden of proof. The applicant's motion to reconsider will therefore be dismissed.

ORDER: The application is rejected. The motion to reconsider is dismissed.