

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

E2

FILE:

Office: PHILADELPHIA, PA Date:

JUL 17 2009

IN RE:

Applicant:

APPLICATION: Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act; 8 U.S.C. § 1431

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 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, 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 March 29, 1983 in the Dominican Republic. His father, [REDACTED] became a U.S. citizen upon his naturalization on April 23, 1997. The applicant was born out of wedlock. The applicant's mother, [REDACTED] is not a U.S. citizen. The applicant became a lawful permanent resident of the United States on August 3, 2001, based upon an approved Petition for Alien Relative filed by his father. The applicant reached the age of 18 on March 29, 2001. He presently seeks a certificate of citizenship claiming that he derived U.S. citizenship through his father.

The field office director found the applicant ineligible for citizenship under section 320 of the Immigration and Nationality Act (the Act), as amended by the Child Citizenship Act of 2000 (CCA). The director's finding was based on the fact that the applicant was over the age of 18 when he was admitted to the United States as a lawful permanent resident. The director further noted that the applicant had not established that he was in his father's physical custody. The application was denied accordingly.

On appeal, the applicant contends that his immigrant visa processing was unreasonably delayed until after his 18th birthday. *See* Notice of Appeal to the AAO, Form I-290B. He also indicates that he will submit evidence to establish that he resided with his father. *Id.* To date, this office has not received such evidence.

"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 1983. Section 320 of the Act, 8 U.S.C. § 1431, as amended by the Child Citizenship Act of 2000 (CCA), applies to this case.¹

Section 320 of the Act, 8 U.S.C. § 1431, states in pertinent part that:

- (a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:
 - (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.

¹ The CCA took effect on February 27, 2001 and benefits all persons who had not yet reached their eighteenth birthdays as of the effective date. Because the applicant was under the age of 18 on February 27, 2001, he meets the age requirement for benefits under the CCA.

- (2) The child is under the age of eighteen years.
- (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

(b) Subsection (a) 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 applicant in this case was over the age of 18 when he was admitted to the United States as a lawful permanent resident. He therefore did not acquire U.S. citizenship under section 320 of the Act, as amended. The AAO finds that the applicant is therefore ineligible for a Certificate of Citizenship under this or any other provision of the Act.

The applicant claims that delays in processing his immigrant visa caused him to become a lawful permanent resident after his 18th birthday. The applicant suggests that he should 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).²

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). Given the fact that the applicant was admitted as a lawful permanent resident after his 18th birthday, he did not acquire citizenship under section 320 of the former Act, 8 U.S.C. § 1431. The AAO concludes that the applicant is statutorily ineligible for citizenship.

² The AAO notes 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.)

Having found the applicant statutorily ineligible for U.S. citizenship because he was over 18 when he was admitted as a lawful permanent resident, the AAO need not address his claim that he was in this father's physical custody. In this regard, the AAO nonetheless notes that the record suggests that the applicant was not in his father's physical custody until his admission as a lawful permanent resident. *See e.g.* Form I-130, Petition for Alien Relative.

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 in this case has not met his burden and the appeal will therefore be dismissed.

ORDER: The appeal is dismissed.