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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: BUFFALO, NY Date: JUL 29 2009

IN RE: [redacted]

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.

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).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Operations Director, Buffalo, 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 on June 4, 1981 in Jamaica. The applicant's mother, became a U.S. citizen upon her naturalization on September 14, 1999. The applicant was born out of wedlock. He was admitted to the United States as a lawful permanent resident on August 19, 1992. The applicant's 18th birthday was on June 4, 1999. He claims that he acquired U.S. citizenship upon his mother's naturalization.

The field operations director evaluated the applicant's eligibility for citizenship under sections 320, 321 and 322 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. §§ 1431, 1432 and 1433. He concluded, based on the fact that the applicant was over 18 years of age at the time of his mother's naturalization, that the applicant did not acquire U.S. citizenship.

On appeal, the applicant cites *Harriot v. Ashcroft*, 233 F.Supp. 2d 538 (E.D.PA 2003), and claims that he should be granted U.S. citizenship because his mother applied for citizenship on his behalf in connection with her naturalization application.

The AAO notes that "[t]he 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 was born on 1981. The Child Citizenship Act of 2000 (CCA), which took effect on February 27, 2001, is not applicable to the applicant's case because he was over 18 years old on its effective date. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Sections 320, 321 and 322 of the Act, 8 U.S.C. §§ 1431, 1432, and 1433, as they existed prior to the CCA amendments, are therefore applicable to this case.

Section 320 of the former Act provided, in pertinent part, that:

- (a) A child born outside of the United States, one of whose parents at the time of the child's birth was an alien and the other of whose parents then was and never thereafter ceased to be a citizen of the United States, shall, if such alien parent is naturalized, become a citizen of the United States, when --
 - (1) such naturalization takes place while such child is under the age of eighteen years; and
 - (2) such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of naturalization

The AAO finds that the applicant is ineligible for U.S. citizenship under section 320 of the former Act because he was over the age of 18 when his mother naturalized, and because the nationality of his father is unknown.

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.

The AAO finds that the applicant is not eligible for citizenship pursuant to the section 321 of the former Act because the applicant was over 18 years old when his mother naturalized.

The AAO also notes that the applicant fails to qualify for U.S. citizenship under section 322 of the former Act, 8 U.S.C. § 1433. **Section 322 of the former Act provided, in pertinent part, that:**

(a) A parent who is a citizen of the United States may apply to the Attorney General [now the Secretary, Homeland Security, "Secretary"] for a certificate of citizenship on behalf of a child born outside the United States. The Attorney General [Secretary] shall issue such a certificate of citizenship upon proof to the satisfaction of the Attorney General [Secretary] 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 child is physically present in the United States pursuant to a lawful admission.
- (3) The child is under the age of 18 years and in the legal custody of the citizen parent.

(b) Upon approval of the application . . . [and] upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this chapter of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the Attorney General [Secretary] with a certificate of citizenship.

The AAO notes that, whether or not an applicant satisfies the requirements set forth in section 322(a) of the former Act, he is required to establish that his application for citizenship was approved, and that he took the oath of allegiance, prior to his 18th birthday. The AAO finds that the applicant in the present case did not meet the requirements set forth in section 322(b) of the former Act, because he did not apply for a certificate of citizenship before he turned 18, because no such application was approved, and because he did not take an oath of allegiance prior to his 18th birthday.

The applicant claims that he automatically acquired U.S. citizenship upon his mother's naturalization because he was included in her application, and because delays in processing his fingerprints because of his unavailability caused his application not to be processed in time, prior to his 18th birthday. The applicant thus 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). *See also generally, Fraga v. Smith*, 607 F.Supp. 517 (D.Or. 1985) (relating to federal court jurisdiction over unreasonable delays or due process claims.)

The applicant's reliance on *Harriot v. Ashcroft*, *supra*, is misplaced. The AAO is not bound by the decision of a federal district court in the Eastern District of Pennsylvania. Additionally, *Harriot* is clearly distinguishable from the instant case because, among other reasons, the application in that case was filed over a year prior to the applicant's 18th birthday. The AAO notes that the applicant's first Form N-600, Application for a Certificate of Citizenship was filed on May 31, 2000, and withdrawn on October 24, 2000. The applicant was already 18 at the time of filing of his first application. Moreover, as noted above, section 322 of the former Act requires the filing, adjudication, and administration of the oath prior to the applicant's 18th birthday. The applicant's 18th birthday was in 1999. The applicant is therefore ineligible for U.S. citizenship under this or any other provision of the Act.

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

ORDER: The appeal is dismissed.