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

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U.S. Citizenship  
and Immigration  
Services

FILE:



Office: PHILADELPHIA, PA

Date:

**MAR 18 2009**

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship under Section 321 of the 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 Office Director, Philadelphia, Pennsylvania and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on January 7, 1978 in Liberia. The applicant's mother, [REDACTED], also born in Liberia, became a naturalized U.S. citizen on October 25, 1994, when the applicant was 16 years old. The applicant's father, [REDACTED], was at the time of his birth a citizen of Liberia and the record does not indicate that he subsequently acquired another nationality. The applicant's parents never married. The applicant was admitted to the United States as a lawful permanent resident on March 15, 1996, when he was 18 years old. The applicant seeks a certificate of citizenship pursuant to former section 321 of the Immigration and Nationality Act (INA or "the Act"), 8 U.S.C. § 1432, based on his mother's naturalization.

The section of law under which the applicant seeks U.S. citizenship was repealed by the Child Citizenship Act of 2000 (CCA), effective as of February 27, 2001.<sup>1</sup> However, any person who would have acquired automatic citizenship under its provisions prior to February 27, 2001 may apply for a certificate of citizenship at any time. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Therefore, the issue before the AAO is whether the applicant has established that he acquired U.S. citizenship under the provisions of section 321 of the Act prior to February 27, 2001.

Former section 321 of the Act, 8 U.S.C. § 1432, provided 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

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<sup>1</sup> The CAA benefited individuals who had not yet reached their 18<sup>th</sup> birthdays as of February 27, 2001. Because the applicant was 23 years old on February 27, 2001, he does not meet the age requirement for benefits under the CAA.

(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 field office director found that the applicant was not eligible to benefit from his mother's naturalization under section 321(a)(3) of the Act as he did not become a lawful permanent resident until he was already 18 years of age. She denied the applications accordingly.<sup>2</sup> *Decision of the Field Office Director*, dated September 10, 2008.

On appeal, the applicant contends that his Form I-485, Application to Register Permanent Residence or Adjust Status, was filed approximately six months prior to his 18<sup>th</sup> birthday but, inexplicably, was not approved by the former Immigration and Naturalization Service (INS, now U.S. Citizenship and Immigration Services (USCIS)) until two months after he turned 18 years of age. He asserts that as a result of the unreasonable delay in the adjudication and approval of his Form I-485, USCIS should be estopped from denying the Form N-600 and be required to grant him U.S. citizenship.

In support of his assertions, the applicant references *Villena v. INS*, 622 F.2d 1352 (9th Cir. 1980) in which, he states, the court found that an unexplained delay in processing an application for naturalization amounted to affirmative misconduct and resulted in the estoppel of the applicant's removal. He also points to *Sun Il Yoo v. INS*, 534 F.2d 1325 (9<sup>th</sup> Cir. 1976), which held that once an alien had gathered and supplied all relevant information and had fulfilled all requirements, the former INS had a duty to grant him the status to which he was entitled by law within a reasonable time period. The applicant also cites to *Harriott v. Ashcroft*, 277 F.Supp.2d 538 (E.D. Pa. 2003) as proof that USCIS internal guidelines require an eligibility determination in all cases within 60 days, as well as the expedited processing of applications for children approaching their 18<sup>th</sup> birthday. The applicant notes that based on the former INS' neglect of its ministerial duties and disregard for its internal guidelines, in this case it was estopped from denying the application.

The applicant claims that delays in the processing of his adjustment application prevented him from obtaining U.S. citizenship through the naturalization of his mother and 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.

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<sup>2</sup> The AAO notes that the applicant filed two Form N-600s, Application for Certificate of Citizenship, May 5, 2008 and June 12, 2008, and that both were denied by the Field Office Director on September 10, 2008.

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 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 did not become a lawful permanent resident until he was already 18 years of age, he is not eligible to derive citizenship under section 321 of the former Act, 8. U.S.C. § 1432.

The AAO also notes that the court cases referenced by the applicant fail to reflect the circumstances of his own situation. In *Villena v. INS*, the 9th Circuit Court of Appeals found the former INS' four-year delay in responding to an immigrant visa petition to lack any apparent justification and stated that the former INS was, therefore, "estopped from claiming that [the petitioner] failed to adequately pursue his claim for preference classification." The court did not estop the INS from removing the petitioner from the United States but remanded the petitioner's case for consideration of whether he was eligible for suspension of deportation. In *Sun Il Yoo v. INS*, the 9<sup>th</sup> Circuit found the one-year delay created by the former INS' failure to acknowledge the bona fides of an immigrant visa petition to be affirmative misconduct and remanded the matter to allow the petitioner to reapply for adjustment of status. In *Harriott v. Ashcroft*, the court found, in part, that the two and one-half year wait between the filing of and decision on an N-643, Application for Certificate of Citizenship in Behalf of Adopted Child, violated the former INS' internal guidelines requiring eligibility determinations in all cases in less than 60 days and expedited processing for children approaching their 18<sup>th</sup> birthdays. The court estopped INS from denying the application and issued a writ of mandamus ordering INS to approve the application *nunc pro tunc*.

In the applicant's case, the AAO finds no evidence of unreasonable delay or failure to follow established processing guidelines. The applicant filed the Form I-485 on October 17, 1995, less than three months prior to his 18<sup>th</sup> birthday. As the former INS issued a decision on his application on March 15, 1996, the processing time for the application totaled five months, well within the six-month period that USCIS defines as timely adjudication. Although the applicant asserts that, as he was nearing his 18<sup>th</sup> birthday, the guidelines referenced in *Harriott v. Ashcroft* required the expedited processing of his Form I-485, the AAO notes that the guidelines referenced by the court were issued in relation to the processing of the Form N-643. No such requirements attached to the Form I-485 filed by the applicant.

The AAO notes “[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship.” *Fedorenko v United States*, 449 U.S. 490, 506 (1981). As previously noted, the regulation at 8 C.F.R. § 341.2 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.” See *Matter of E-M-*, 20 I&N Dec. 77 (Comm. 1989). The applicant has not met his burden in this proceeding. The appeal will, therefore, be dismissed.

**ORDER:** The appeal is dismissed.