



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: ATLANTA, GA

Date: MAY 07 2009

IN RE:

Applicant:

[REDACTED]

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 District Director, Atlanta, Georgia 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 July 3, 1986 in Nigeria. He attained the age of 18 on July 3, 2004. The applicant's birth certificate indicates that his parents are [REDACTED] and [REDACTED].

The applicant's parents were married on May 27, 1973. The applicant's mother became a U.S. citizen upon her naturalization on October 7, 2003, when the applicant was 17. The applicant's father resides in Nigeria and is not a U.S. citizen. The applicant was admitted to the United States as a non-immigrant and adjusted his status to that of lawful permanent resident of the United States on September 29, 2005.

The District Director initially denied the applicant's claim on July 19, 2005. The applicant timely appealed the denial. The director reopened the matter, but again denied the application on October 23, 2006. The director's July 2005 decision analyzed the applicant's citizenship claim pursuant to section 320 of the Act, 8 U.S.C. § 1431, as amended. The October 2006 decision cites section 321 of the former Act, 8 U.S.C. § 1432 (repealed). The director found that the applicant failed to acquire U.S. citizenship because he was not admitted to lawful permanent residence before his 18th birthday as required.

On appeal, the applicant maintains, in relevant part, that he would have become a lawful permanent resident prior to his 18th birthday, and therefore eligible to acquire U.S. citizenship, had his application for adjustment of status been timely adjudicated. *See Applicant's Mother's Appeal Statement.*

"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 1986. Section 320 of the Act, 8 U.S.C. § 1431, as amended by the Child Citizenship Act of 2000 (CCA), is applicable to the applicant's claim.

The CCA amended sections 320 and 322 of the Act, 8 U.S.C. §§ 1431 and 1433, and repealed section 321 of the Act, 8 U.S.C. § 1432. The CCA took effect on February 27, 2001, and benefits all persons who had not yet reached their 18th birthdays as of February 27, 2001. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). The applicant was under the age of 18 on February 27, 2001, he therefore meets the age requirement for benefits under the CCA.

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.
 - (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 1101(b)(1) of this title.

The applicant was admitted to lawful permanent residence on September 29, 2005, when he was 19 years of age. He therefore did not automatically acquire U.S. citizenship upon his adjustment of status pursuant to section 320 of the Act, 8 U.S.C. § 1431, or any other provision of the Act.¹

The applicant claims that delays in processing his adjustment application caused him to be admitted to lawful permanent residence after 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). 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 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).

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).

¹ The AAO notes that section 321 of the former Act, 8 U.S.C. § 1432 (repealed), also required that the applicant be admitted to lawful permanent residence prior to his or her 18th birthday.

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 did not meet his burden. He was over the age of 18 when he obtained lawful permanent residence and was therefore statutorily ineligible to acquire U.S. citizenship under section 320 of the Act, 8 U.S.C. § 1431. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.