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



**U.S. Citizenship
and Immigration
Services**

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FILE:

Office: WASHINGTON, D.C. Date:

APR 02 2010

IN RE:

Applicant:

APPLICATION:

Application for Certificate of Citizenship under Section 322 of the Immigration and Nationality Act; 8 U.S.C. § 1433.

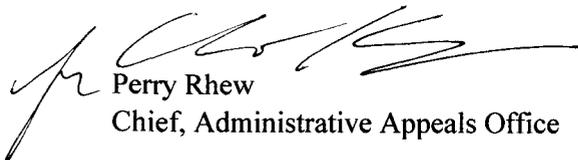
ON BEHALF OF APPLICANT:

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).


Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Washington, D.C., 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 February 19, 1991 in the Ivory Coast. The applicant's biological parents were [REDACTED] and [REDACTED]. The applicant's biological parents passed away. The applicant was subsequently adopted by [REDACTED] on April 19, 2007, when she was 16 years old. The applicant's adoptive father became a U.S. citizen upon his naturalization on April 11, 2007, when the applicant was 16 years old. The applicant presently seeks a certificate of citizenship claiming that she derived U.S. citizenship through her father pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The field office director denied the application finding that the applicant was over the age of 18 and therefore ineligible for citizenship under section 322 of the Act, 8 U.S.C. § 1433. The director further noted that the applicant was adopted after her 16th birthday.

On appeal, the applicant claims that her application was filed about a month prior to her 18th birthday. *See* Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO. The applicant further states that her adoption process was lengthy and therefore not completed until after her 16th birthday. *Id.* She states that she is an orphan, and that denial of her application would create problems for her adoptive family. *Id.*

The Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), which took effect on February 27, 2001, amended sections 320 and 322 of the Act, and repealed section 321 of the Act. The provisions of the CCA are not retroactive, and the amended provisions of section 320 and 322 of the Act apply only to persons who were not yet 18 years old as of February 27, 2001. The applicant's 18th birthday was on February 19, 2009. Because the applicant was under the age of 18 on February 27, 2001, she is eligible for the benefits of the amended Act. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

Section 322 of the Act, 8 U.S.C. § 1433, applies to children born and residing outside of the United States, and provides that:

(a) A parent who is a citizen of the United States . . . may apply for naturalization on behalf of a child born outside of the United States who has not acquired citizenship automatically under section 320. The Attorney General [now Secretary of Homeland Security] shall issue a certificate of citizenship to such applicant upon proof, to the satisfaction of the [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 United States citizen parent--

(A) has . . . been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years; or

(B) has . . . a citizen parent who has been physically present in the United States or its outlying possessions for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years.

(3) The child is under the age of eighteen years.

(4) The child is residing outside of the United States in the legal and physical custody of the applicant [citizen parent] (or, if the citizen parent is deceased, an individual who does not object to the application).

(5) The child is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.

(b) Upon approval of the application (which may be filed from abroad) and, except as provided in the last sentence of section 337(a), upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this Act of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the [Secretary] with a certificate of citizenship.

(c) Subsections (a) and (b) 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).

Section 101(b)(1)(E) of the Act, 8 U.S.C. § 1101(b)(1)(E), states, in pertinent part, that the term "child" means an unmarried person under twenty-one years of age who is-

(i) a child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years. . .

The record in this case reflects that the applicant reached the age of 18 on February 19, 2009. Section 322(a)(3) and (b) of the Act, 8 U.S.C. § 1433(a)(3) and (b), and the regulations promulgated thereunder, at 8 C.F.R. § 322.2(a)(3), require that a certificate of citizenship application be filed,

adjudicated, and approved with the oath of allegiance administered before the child's eighteenth birthday. The AAO therefore finds that the applicant is ineligible for citizenship under section 322 of the Act because she is already 18 years old.

Similarly, the record clearly establishes that the applicant was not adopted prior to her sixteenth birthday and therefore does not meet the definition of "child" found in section 101(b)(1)(E) of the Act, 8 U.S.C. § 1101(b)(1)(E).

The record shows that the applicant filed her application the month prior to her eighteenth birthday. The applicant further maintains that delays beyond her control in her adoption proceedings caused her to be adopted after her sixteenth birthday. The applicant thus appears to claim that she should gain U.S. citizenship by application of the doctrine of equitable estoppel. The AAO 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, 338 (BIA 1991). The jurisdiction of the AAO is limited to that authority specifically granted through the regulations at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on Feb. 28, 2003) and subsequent amendments. Accordingly, the AAO lacks authority to consider the applicant's claim that her case ought to be approved because it was filed prior to her eighteenth birthday.

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).

The applicant bears the burden of proof in this case to establish her eligibility for citizenship. Section 322(a) of the Act, 88 U.S.C. § 1433(a). The record shows that the applicant is statutorily ineligible to obtain a certificate of citizenship under section 322 of the Act because she is over the age of 18 years and was not adopted prior to her sixteenth birthday. Thus, the applicant has failed to meet her burden of proof and her appeal will be dismissed.

ORDER: The appeal is dismissed.