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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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[Redacted]

FILE:

[Redacted]

Office:

[Redacted]

Date: **AUG 19 2010**

IN RE:

Applicant:

[Redacted]

APPLICATION:

Application for Certificate of Citizenship under Former Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (repealed).

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

[Redacted Signature]

Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Houston, Texas. 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 June 30, 1982 in Mexico. The applicant's mother, [REDACTED] became a U.S. citizen upon her naturalization on August 20, 1999. The applicant was born out of wedlock. The applicant's father's name does not appear on his birth certificate. The applicant was admitted to the United States as a lawful permanent resident on May 21, 2003, when he was 20 years old. The applicant seeks a certificate of citizenship claiming that he derived U.S. citizenship through his mother.

The district director determined that the applicant did not derive U.S. citizenship under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432 (repealed), because he was not admitted to the United States as a lawful permanent resident prior to his eighteenth birthday. The application was accordingly denied.

On appeal, the applicant, through counsel, states that he did not obtain permanent residence prior to his eighteenth birthday due to a five-year delay in processing his adjustment of status application. See Statement of the Applicant on the Form I-290B, Notice of Appeal to the AAO. Counsel cites [REDACTED], 522 F.3d 257 (2nd Cir. 2008), in support of the applicant's claim that he should be granted U.S. citizenship. *Id.*

The applicable law for derivative citizenship purposes is "the law in effect at the time the critical events giving rise to eligibility occurred." *Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005). The Child Citizenship Act of 2000 (the 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. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Because the applicant was over the age of 18 on February 27, 2001, former section 321(a) of the Act is applicable in his case.

Former section 321(a) of the Act, stated, 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 (1) of this subsection, or the parent 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 record shows that the applicant's mother became a U.S. citizen on August 20, 1999. Further, the record shows that the applicant was born out of wedlock and that his paternity was not established by legitimation. However, the record establishes that the applicant was not residing in the United States pursuant to a lawful admission for permanent residence prior to his eighteenth birthday as is required by former section 321(a)(4) and (5) of the Act. The applicant therefore did not derive U.S. citizenship through his mother pursuant to former section 321 or any other provision of the Act.

Counsel states that the applicant's application for certificate of citizenship be approved "as a matter of equity." See Statement of the Applicant on the Form I-290B, Notice of Appeal to the AAO. The AAO notes first that it 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 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 Volume 8 of the Code of Federal Regulations (8 C.F.R.) section 103.1(f)(3)(iii) (as in effect on Feb. 28, 2003) and subsequent amendments.

Counsel's reliance on *Poole v. Mukasey*, *supra*, is misplaced. First, the AAO notes that it is not bound by a decision of the Second Circuit Court of Appeals as this case arises within the Fifth Circuit. Moreover, the Court in *Poole*, in denying *en banc* rehearing, "recognized that Poole's claim 'appears to fail to satisfy the timing requirement of subsection 1432(a)(4)'" and that the case was "remanded so that the [Board of Immigration Appeals] could consider whether the delay in processing the mother's application, submitted when Poole was sixteen, 'might be some basis for relieving Poole' of the timing requirement." [redacted] citations omitted). The [redacted] adjudication be corrected and the citizenship claim granted on equitable grounds.

It is well established that the requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and United States Citizenship and Immigration Services (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 burden of proof in citizenship cases is on the claimant to establish the claimed citizenship by a *preponderance of the evidence*. *See* Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2. The applicant has not met his burden of proof, and his appeal will be dismissed.

ORDER: The appeal is dismissed.