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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE:

Office: CHICAGO, IL

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APPLICATION:

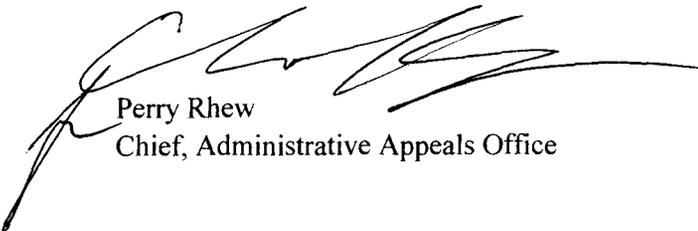
Application for Certificate of Citizenship under Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (2000).

ON BEHALF OF APPLICANT:

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).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Chicago, Illinois, 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 January 1, 1979 in Lebanon. The applicant's parents, [REDACTED] and [REDACTED] were divorced in 1978. The applicant's parents remarried each other in 1988. The applicant's mother became a U. S. citizen upon her naturalization on March 3, 1998, when the applicant was 19 years old. The applicant was admitted to the United States as a lawful permanent resident on November 27, 1987, when the applicant was eight years old. The applicant seeks a certificate of citizenship claiming that she derived U.S. citizenship through her mother.

The field office director denied the application finding that the applicant was over the age of 18 when her mother naturalized. The director further noted that the applicant's father is not a U.S. citizen.

On appeal, the applicant, through counsel, maintains that her parents were divorced when she was born and she therefore can derive U.S. citizenship solely through her mother. Further, the applicant states that her mother's naturalization was delayed due to government misconduct and that she should be granted citizenship on estoppel grounds. *See* Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO; *see also* Appeal Brief.

The applicable law in derivative citizenship cases 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 applicant's 18th birthday was in 1997. Section 321 of the former Act, 8 U.S.C. § 1432 (2000), is therefore applicable to this case.¹

Section 321 of the former Act, 8 U.S.C. § 1432 (2000), 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

¹ The Child Citizenship Act of 2000 (CCA), Pub. L. 106-395, 114 Stat. 1631 (Oct. 30, 2000), amended sections 320 and 322 of the Act, and repealed section 321 of the Act. The provisions of the CCA took effect on February 27, 2001, are not retroactive, and apply only to persons who were not yet 18 years old as of February 27, 2001. *See* CCA § 104. Because the applicant was over the age of 18 on February 27, 2001, she is not eligible for the benefits of the amended Act. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

(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 applicant claims that delays in processing her mother's naturalization caused her mother to become a U.S. citizen after the applicant's 18th birthday. The applicant thus 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 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 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.

Section 321(a)(3) of the former Act allows for the derivation of U.S. citizenship upon "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."

The AAO notes the Second Circuit's decision in *Lewis v. Gonzales*, 481 F.3d 125, 130 (2nd Cir. 2007) where the court emphasized that "because the second clause of § 1432(a)(3) explicitly provides for the circumstance in which 'the child was born out of wedlock,' we cannot interpret the first clause to silently recognize the same circumstance" Where the second clause of section 321(a)(3) explicitly provides for the mechanism for derivation of U.S. citizenship when a child is born out of wedlock, the first clause cannot be read to provide a way around the listed requirements.

Therefore, although the applicant's parents were married and "legally separated" prior to her birth, they were not married at the time of her birth. Therefore, the applicant was born out of wedlock, and can only automatically derive U.S. citizenship upon her mother's naturalization if her paternity has not been established. The applicant's father is identified on her birth certificate; the applicant's parents were married until a few months prior to her birth, and remarried in 1988 when she was nine years old. The applicant's father's paternity was therefore established, and she did not automatically derive U.S. citizenship solely through her mother under section 321(a)(3) of the former 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. 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 is statutorily ineligible to derive citizenship under section 321(a)(3) of the former Act because she was over 18 at the time of her mother's naturalization, and because her father's paternity was established. She therefore cannot meet her burden of proof. The appeal will be dismissed.

ORDER: The appeal is dismissed.