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: CLEVELAND, OHIO Date: MAR 30 2010

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under Former Section 322 of the Immigration and Nationality Act, 8 U.S.C. § 1433 (1967).

ON BEHALF OF APPLICANT:

[redacted]

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).

Ellen C. Goleman

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Cleveland, Ohio Field Office Director and the Administrative Appeals Office (AAO) dismissed the applicant's subsequent appeal. The matter is now before the AAO on motion. The motion will be dismissed.

The record in this case provides the following pertinent facts and procedural history. The applicant was born on November 15, 1967 in Honduras. He was admitted to the United States as a lawful permanent resident on February 21, 1981 and adopted in Arkansas by a native-born U.S. citizen on August 18, 1981 when he was 13 years old. The applicant's adoptive mother submitted an Application to File a Petition for Naturalization on the applicant's behalf in 1982, but the applicant turned 18 in 1985 before the application was adjudicated. The applicant states that his adoptive mother died in Honduras in 2000.

The field office director considered the applicant's citizenship claim under sections 301(c), 320, 321 and 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1401(c), 1431, 1432 and 1433. The director concluded that the applicant was ineligible for citizenship under sections 301(c), 320 or 321 of the Act because those sections pertained to the derivation of citizenship through naturalized parents and the applicant's adoptive mother was a native-born U.S. citizen. Upon finding that the applicant had already reached the age of 18, the director found the applicant ineligible for citizenship under section 322 of the Act and denied the application accordingly.

In its March 9, 2009 decision on appeal, incorporated here by reference, the AAO determined that the applicant was ineligible for citizenship under former section 322(a) of the Act because he did not fulfill the necessary requirements before obtaining the age of 18.

Counsel subsequently submitted a motion to reopen and reconsider the AAO's decision. Counsel's submission fails to meet the requirements for a motion to reopen or reconsider and will be dismissed.

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy. 8 C.F.R. § 103.5(a)(3). A motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.* A motion that does not meet the applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

While counsel's April 7, 2009 letter refers to "the instant Motion to Reopen," his submission states no new facts and is accompanied by no supporting affidavits or other evidence. Accordingly, counsel's motion to reopen will be dismissed and his submission will be evaluated as a motion to reconsider.

On motion, counsel correctly notes that in its prior decision the AAO stated that counsel had failed to submit a brief in support of the appeal. The record contains counsel's appellate brief filed on January 8, 2009. Nonetheless, the assertions in counsel's two-page appellate brief are repeated verbatim in his present motion. Each assertion will be addressed as follows.

Counsel first asserts that the field office director based her decision on an amended section 322 of the Act, which was not in effect at the time the application was filed. While counsel is correct, he does not acknowledge that the AAO reviewed the applicant's case on appeal under the applicable version of section 322 of the Act. As explained in our prior decision, 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. *See Chau v. Immigration and Naturalization Service,* 247 F.3d 1026, 1028 n.3 (9th Cir. 2000); *Runnett v. Shultz,* 901 F.2d 782, 783 (9th Cir.1990). Because the applicant was born in 1967, former section 322 of the Act, 8 U.S.C. § 1433 (1967) applies to his case.

Former section 322 of the Act prescribed, in pertinent part, that:

> (a) A child born outside of the United States, one or both of whose parents is at the time of petitioning for the naturalization of the child, a citizen of the United States, either by birth or naturalization, may be naturalized if under the age of eighteen years and not otherwise disqualified from becoming a citizen by reason of section 313, 314, 315, or 318 of this Act, and if residing permanently in the United States, with the citizen parent, pursuant to a lawful admission for permanent residence, on the petition of such citizen parent, upon compliance with all the provisions of this title . . . .

This provision applied equally to children adopted while under the age of 16. Former section 322(b) of the Act, 8 U.S.C. § 1433 (1967).

Former section 322(a) of the Act explicitly required the child to be under the age of 18 at the time of naturalization. Although the applicant was under 18 at the time his adoptive mother submitted the application on his behalf, he was over 18 at the time he was interviewed and his application was adjudicated.[1] Accordingly, the applicant was and remains ineligible for citizenship under former section 322(a) of the Act.

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[1] The record clearly shows that at the time of his interview, the applicant was ineligible for citizenship under former section 322 of the Act because he was already 18 years old. The applicant's Form N-405, Petition for Naturalization, was signed by an examiner on February 26, 1986 and is marked denied. His mother's Application to File a Petition for Naturalization in Behalf of a Child is annotated, "nonfiled, over 18 2/26/86." The record contains a Form N-400, Application for Naturalization, signed by the applicant on the same day, February 26, 1986, which was denied in 1989 after the applicant failed to appear for four hearings scheduled in 1986 and 1987.

Counsel's second claim on motion is that the interview notices were not sent to the applicant's and his adoptive mother's correct address in 1984. The record refutes this claim. In a notice dated July 20, 1983, the former Immigration and Naturalization Service (INS) requested the applicant's adoptive mother to complete additional forms, to appear at an interview on August 4, 1983 with the applicant and to bring her adoption decree to the interview. In an undated letter, the applicant's mother requested that the interview be postponed because the applicant was in Honduras for six months. The INS issued a second notice rescheduling the interview to March 13, 1984. The record contains a handwritten note from the applicant's adoptive mother postmarked August 27, 1984 and providing the applicant's complete name and alien registration number in response to a letter from the INS explaining that they could not respond to her inquiry on his case without such information. The applicant was then sent a third notice for an interview on February 25, 1986, which he attended. Contrary to counsel's assertion that the record lacks evidence that the interview notices were sent to an incorrect address, all three notices were sent to the same address which the applicant's adoptive mother stated as her return address on her correspondence with the INS.

Counsel's third assertion is that an interview was not required for the applicant's naturalization, but was merely a ministerial function. Counsel cites no authority for his claim. The former INS and USCIS have long held the delegated authority to examine applicants for naturalization and promulgate rules and regulations for the examination of an applicant's qualifications for citizenship. *See* section 332(a) of the Act, 8 U.S.C. §1443(a). Moreover, the regulations promulgated under former section 332 of the Act required the personal appearance of the child and his or her parent before a certificate of citizenship could be issued. *See* 8 C.F.R. § 341.2(a) (1972).[2]

Counsel's final assertion on motion is that the applicant was not informed by USCIS why his case was transferred to the Cleveland Field Office. However, the record shows that in 2008, the applicant was convicted of a criminal offense in Ohio and was thereafter held in custody by U.S. Immigration and Customs Enforcement in Ohio pending the resolution of his removal proceedings. Regardless, counsel fails to explain why the transfer of the case warrants reconsideration of our prior decision on the merits of the applicant's appeal.

While the consequences of the denial of the instant application are understandably difficult for the applicant to contemplate, the requirements for citizenship are statutorily mandated by Congress, and USCIS lacks authority to issue a certificate of citizenship when an applicant fails to meet the relevant statutory provisions. 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

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[2] The regulations were later amended to allow the discretionary waiver of the interview requirement, but only if the applicant submitted a Report of Birth Abroad of a U.S. Citizen issued by the Department of State, a valid U.S. passport for the child, or the naturalization certificate of the parent(s). *See* 8 C.F.R. § 341.2(a)(1). The applicant in this case possessed none of those documents.

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").

Conclusion

On motion, counsel states no new facts and submits no additional evidence. Accordingly, counsel's submission does not meet the requirements for a motion to reopen pursuant to the regulation at 8 C.F.R. § 103.5(a)(2). While counsel reasserts the applicant's eligibility for citizenship under former section 322 of the Act, he cites no precedent decisions or binding caselaw to establish that our prior decision was based on an incorrect application of law or USCIS policy. The record contradicts counsel's assertion regarding the address to which the interview notices were sent and counsel fails to articulate why the transfer of the applicant's case to the Cleveland Field Office warrants reconsideration of our prior decision. Consequently, counsel's submission does not meet the requirements for a motion to reconsider pursuant to the regulation at 8 C.F.R. § 103.5(a)(3).

Counsel's letter dated April 7, 2009 fails to meet the requirements for a motion to reconsider or a motion to reopen. Consequently, the applicant's motion will be dismissed and the March 9, 2009 decision of the AAO will be affirmed.

ORDER: The motion to reopen and reconsider is dismissed.