

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY

E₂

FILE: [REDACTED] Office: SAN JOSE, CA Date: **MAY 13 2010**

IN RE: Applicant: [REDACTED]

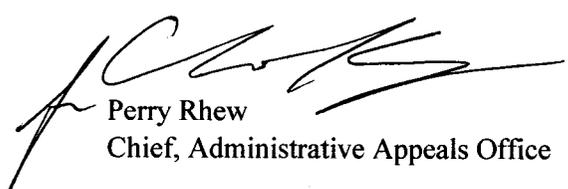
APPLICATION: Application for Certificate of Citizenship under Section 322 of the Immigration and Nationality Act; 8 U.S.C. §1433.

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 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, San Jose, California, 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 November 20, 1987 in the Philippines. The applicant was adopted in 1999 by [REDACTED] and [REDACTED]. The applicant's adopted parents became U.S. citizens upon their naturalizations in 1979 and 1986, respectively. They were married in California in 1982. The applicant's eighteenth birthday was on November 20, 2005. The applicant seeks a certificate of citizenship claiming that he derived U.S. citizenship through his adoptive parents pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433 (2000).

Upon finding that the applicant had already reached the age of 18, the field office director denied his application. On appeal, the applicant maintains that he timely applied for a certificate of citizenship and that delays in processing his citizenship application should not be used as a basis for denying his application. See Applicant's Appeal Brief at 2. Counsel recognizes that section 322 of the Act requires that the certificate of citizenship be issued prior to the applicant's eighteenth birthday, but cites *Harriot v. Ashcroft*, 277 F.Supp.2d 538, 542-25 (E.D. Pa. 2003), and maintains that his application should be granted. *Id.*

Section 322 of the Act was amended by the Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), and took effect on February 27, 2001. CCA § 104. The CCA benefits all persons who had not yet reached their eighteenth birthdays as of February 27, 2001. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Because the applicant was under 18 years old on February 27, 2001, he meets the age requirement for benefits under the CCA.

Section 322 of the Act, 8 U.S.C. § 1433, 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 shall issue a certificate of citizenship to such applicant upon proof, to the satisfaction of the Attorney General, 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]

(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 Attorney General 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)(i) of the Act, 8 U.S.C. § 1101(b)(1)(E)(i) defines a child as, in pertinent part: “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 November 20, 2005. Sections 322(a)(3) and (b) of the Act, and the regulation 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 applicant is ineligible for citizenship under the cited provision because he is already 18.

The applicant, through counsel, maintains that he “fully complied” with the statutory requirements for citizenship under section 322 of the Act. *See* Applicant’s Appeal Brief at 2. He further states that he timely applied for citizenship but his application was unnecessarily delayed. *Id.* Citing *Harriot v. Ashcroft, supra*, he maintains that he is eligible to obtain a certificate of citizenship even though he is over the age of 18.

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 so as to preclude it from undertaking a lawful course of action that it is empowered to pursue by statute and regulation.” *Matter of [REDACTED]*, 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.

The applicant’s reliance on *Harriot v. Ashcroft, supra*, is misplaced. The AAO is not bound by the decision of a federal district court in the Eastern District of Pennsylvania. Moreover, as noted above, the AAO is without authority to apply the doctrine of equitable estoppel to approve the application for derivative citizenship *nunc pro tunc*. Nonetheless, we note that the Ninth Circuit Court of Appeals, within whose jurisdiction this case arose, has held that the government will be equitably estopped only upon a showing of “affirmative misconduct going beyond mere negligence.” *Socop-Gonzalez v. INS*, 208 F.3d 838, 842 (9th Cir. 2000) (internal quotation and citations omitted). Mere delay is insufficient to constitute affirmative misconduct on behalf of U.S. Citizenship and Immigration Services absent evidence that the delay was unwarranted. *INS v. Miranda*, 459 U.S. 14, 18-19 (1982). In this case, the record indicates that delay in the adjudication of the application was due to a request for additional evidence, verification of certain evidence and the rescheduling of the applicant’s interview because he was unable to obtain a visa to enter the United States.¹

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.

The applicant bears the burden of proof in these proceedings to establish his eligibility. Section 322(a) of the Act; 8 C.F.R. § 322.3(b). The applicant has not met his burden because he is over the age of 18 and is statutorily ineligible for U.S. citizenship under sections 322(a)(3) and (b) of the Act. His appeal will therefore be dismissed.

ORDER: The appeal is dismissed.

¹ The record also indicates that the instant application for a certificate of citizenship was filed after the applicant’s adoptive father’s Form I-130, petition for alien relative, was denied for failure to establish that the applicant had resided with his adoptive father for at least two years. This issue is also relevant to the instant application. However, because the applicant is now over the age of 18, we do not reach the issue of whether or not he has met the requirements of sections 101(b)(1)(E)(i) and 322(c) of the Act.