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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: ORLANDO, FLORIDA Date: OCT 08 2010

IN RE: [REDACTED]

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

ON BEHALF OF PETITIONER:

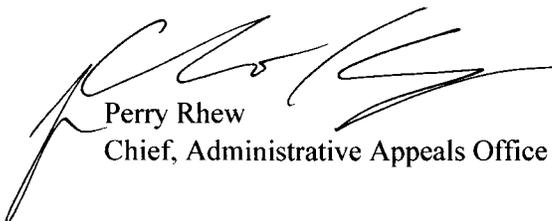
[REDACTED]

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.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Orlando, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in the Bahamas on October 13, 1991, to married parents. The applicant's mother is a U.S. citizen through her birth abroad to a U.S. citizen parent. The applicant's grandmother was born in the United States on December 25, 1928. The applicant seeks a Certificate of Citizenship pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The applicant filed an Application for Citizenship and Issuance of Certificate Under Section 322 (Form N-600K) on March 5, 2009. The applicant was scheduled to appear for an interview on her application on October 8, 2009. The applicant did not attend the interview. On October 21, 2009, the director denied the application, finding, among other things, that the applicant had already reached her eighteenth birthday. *See Decision of the Director*, dated Oct. 21, 2009.

On appeal, the applicant contends through counsel that she did not attend the interview because she did not timely receive the interview notice, which was mailed to an incorrect address. Counsel asserts that U.S. Citizenship and Immigration Services (USCIS) should be equitably estopped from denying the application. *See Form I-290B, Notice of Appeal*, filed November 20, 2009 (citing *Harriott v. Ashcroft*, 277 F. Supp. 2d 538, 542-45 (E.D. Pa. 2003)). Here, the record shows that the applicant's appointment notice was sent to the address listed on her Application for Citizenship and Issuance of a Certificate Under Section 322 (Form N-600K). Although counsel contends that the applicant did not receive the notice because USCIS did not include the applicant's post office box number, this number was not listed on the Form N-600K. The record further shows that the applicant did receive the interview notice at the Bahamas address listed on the Form N-600K. Because service is effective upon mailing to the most recent address of record, this contention lacks merit. *See* 8 C.F.R. § 103.5a(a)(1).

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

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

The record reflects that the applicant reached her eighteenth birthday on October 13, 2009. Accordingly, the applicant is statutorily ineligible for a certificate of citizenship because she does not meet the age limitation set forth in section 322(a)(3) of the Act. Because the applicant is no longer under the age of eighteen, we do not reach the issues of whether or not she is residing outside of the United States in the legal and physical custody of her U.S. citizen mother, or whether her grandmother met the physical presence requirements set forth in section 322(a)(2)(B) of the Act.

The applicant contends that USCIS should be equitably estopped from denying her application for a certificate of citizenship due to USCIS delay in the processing of her application, citing to *Harriott v. Ashcroft, supra*. This contention lacks merit. First, 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 February 28, 2003) and subsequent amendments. Second, the AAO is not bound by *Harriott v. Ashcroft, supra*, a case decided by a U.S. District Court in the Eastern District of Pennsylvania. Third, even if *Harriott v. Ashcroft, supra*, provided binding authority, the record here does not reflect USCIS misconduct or unreasonable delay in adjudication.

The applicant also contends that USCIS should be equitably estopped from denying her application for a certificate of citizenship because “there is ample legal authority applicable in immigration courts where even an in absentia order may be rescinded if a person can demonstrate that failure to appear at a hearing was due to a lack of proper notice.” *Notice of Appeal* (citing to Section 240(b)(5)(C) of the Act, 8 U.S.C. § 1229a(b)(5)(C), and 8 C.F.R. § 1003.23(b)(4)(ii)). Here, as stated above, the AAO is without authority to apply the doctrine of equitable estoppel in this or any other case. Additionally, the record indicates that the applicant was provided proper notice of her interview by service at the address indicated on her Form N-600K. Finally, the applicant has provided no legal authority to support her contention that the statutory and regulatory provisions providing for rescission of an in absentia order of removal are applicable to the adjudication of certificates of citizenship.

A person may obtain citizenship only in strict compliance with the statutory requirements imposed by Congress, and the AAO lacks the authority to use equitable powers to issue a certificate of citizenship nunc pro tunc when an applicant fails to meet the relevant statutory provisions. *See INS v. Pangilinan*, 486 U.S. 875, 883-84 (1988). Moreover, “it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect,” and that any doubts concerning citizenship are to be resolved in favor of the United States. *Berenyi v. District Director, INS*, 385 U.S. 630, 637 (1967).

The applicant bears the burden of proof in these proceedings to establish the claimed citizenship by a preponderance of the evidence. 8 C.F.R. § 341.2(c). Because the applicant has not met her burden of showing that she meets the requirements of section 322(a) of the Act, the appeal will be dismissed.

ORDER: The appeal is dismissed.