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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: KANSAS CITY, MO

Date: **OCT 22 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for Certificate of Citizenship under Former Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (repealed).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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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, Kansas City, Missouri. The applicant's Motion to Reopen or Reconsider the director's denial was dismissed. 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 July 28, 1976 in Mexico. The applicant claims that she was adopted by [REDACTED] as of August 27, 1981. She further claims that she was admitted to the United States as a U.S. citizen on July 30, 1976. The applicant's adoptive parents are native-born U.S. citizens. The applicant now seeks a certificate of citizenship claiming that she derived U.S. citizenship through her adoptive parents.

The field office director determined that the applicant could not derive U.S. citizenship under former sections 321 or 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432 or 1433 (1976), or under section 320 of the Act, 8 U.S.C. § 1431, as amended by the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), because, *inter alia*, she was over the age of 18. The director further noted that the applicant was the adoptive daughter of native-born U.S. citizens and, as such, not eligible to derive U.S. citizen upon a parent's naturalization.

In seeking reconsideration and on appeal, the applicant, through counsel, maintains that she is eligible for U.S. citizenship under section 322 of the Act, as amended by the CCA. Alternatively, the applicant requests that her application be granted on equitable grounds or that she be permitted to apply for lawful permanent residence [REDACTED] See Statement Accompanying Form I-290B, Notice of Appeal to the AAO.

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 CCA, which took effect on February 27, 2001, amended sections 320 and 322 of the Act, and repealed section 321 of the Act, but it is not retroactive, and therefore does not apply to persons, such as the applicant, who were over the age of 18 on February 27, 2001. *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Former sections 320, 321 and 322 of the Act are applicable in this case.

The applicant did not acquire U.S. citizenship under former sections 320 or 321 of the Act, as previously in force prior to February 27, 2001, because they provided for acquisition of U.S. citizenship upon the naturalization of a parent, not through a native-born U.S. citizen parent.¹

¹ The AAO notes further that the applicant was not admitted to the United States as a lawful permanent resident. Former section 321 of the Act requires that the applicant be residing in the United States pursuant to a lawful admission for permanent residence at the time of the U.S. citizen parent's naturalization. See *Smart v. Ashcroft*, 401 F.3d 119, 123 (2nd Cir. 2005). Additionally, the AAO notes that subsection (b) of former section 321 of the Act, which provided for derivation of U.S. citizenship through an adoptive parent, was added by the Act of October 5, 1978, Pub. L. No. 95-417, 92 Stat. 917, but did not apply retroactively. An adoptive child could not derive U.S. citizenship from an adoptive parent prior to October 5, 1978.

The AAO also notes that the applicant is not eligible for U.S. citizenship under former section 322 of the Act, which allowed the child of a U.S. citizen to apply for naturalization and to obtain a certificate of citizenship

- (b) Upon approval of the application . . . [and] upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this chapter of an applicant for naturalization

The AAO notes that, whether or not an applicant satisfied the eligibility criteria of former section 322(a) of the Act, she was required to establish pursuant to former section 322(b) of the Act that her application for citizenship was approved, and that she took the oath of allegiance, prior to her 18th birthday. The applicant in the present case did not apply for a certificate of citizenship before she turned 18, no such application was approved, and she did not take an oath of allegiance prior to her 18th birthday. Therefore, the applicant did not derive U.S. citizenship under former section 322 of the Act.

Counsel states that the government is “equitably estopped to deny” the applicant’s claim because she was lawfully admitted to the United States in 1976. See Statement Accompanying the Form I-290B, Notice of Appeal to the AAO (referencing a “USC” stamp on the applicant’s birth certificate). 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. The regulatory authority of the AAO does not include consideration of equitable claims or requests to submit applications or petitions

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 her burden of proof, and her appeal will be dismissed.

ORDER: The appeal is dismissed.