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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**



E<sub>2</sub>

Date:

Office: SAN DIEGO, CA

FILE: 

**AUG 09 2011**

IN RE:

Applicant: 

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 \$630. 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,

A handwritten signature in cursive script, appearing to read "Perry Rhew".

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, San Diego, 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 June 29, 1992 in Costa Rica. The applicant was adopted by [REDACTED] a native-born U.S. citizen, on February 9, 2010. The applicant's mother, [REDACTED] were married in 2001. The applicant's eighteenth birthday was on June 29, 2010. The applicant seeks a certificate of citizenship claiming that he derived U.S. citizenship through his adoptive father pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The district director initially granted the applicant's claim in error, and upon finding that the applicant had already reached the age of 18, the matter was reopened and the application was denied. The director also noted that the applicant was adopted after his sixteenth birthday, further indicating that he was ineligible for U.S. citizenship under section 322 of the Act.

On appeal, the applicant maintains that he requested expedited processing of his application in order to ensure adjudication prior to his eighteenth birthday. See Applicant's Appeal Statement. He states that his application was initially granted and that he was issued a certificate of citizenship by the director with full knowledge of his age. *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] (or, if the citizen parent is deceased, an individual who does not object to the application).

(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).

The record in this case reflects that the applicant reached the age of 18 on June 29, 2010. 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 years old. The AAO also notes that the applicant's adoption occurred after his sixteenth birthday. Therefore, the applicant also could not establish statutory eligibility to derive U.S. citizenship from his adoptive father under section 322(c) of the Act (which incorporates the requirement in section 101(b)(1) of the Act that a child be adopted prior to his sixteenth birthday).

The applicant maintains that he was eligible for a certificate of citizenship when he filed the application and that he was forthcoming about his age during his interview. *See* Applicant's Appeal Statement. Section 322 of the Act, however, specifically requires the adjudication and approval of the application, as well as taking of the oath of citizenship, prior to an applicant's eighteenth birthday. U.S. citizenship cannot be derived under this section after an applicant's eighteenth birthday.

The requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and that U.S. 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 applicant is statutorily ineligible for U.S. citizenship under sections 322(a)(3), (b) and (c) of the Act. His appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.