

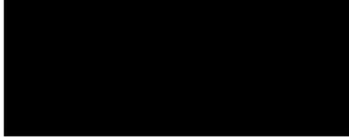
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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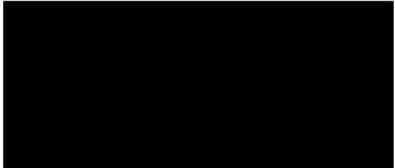
FILE: [REDACTED] Office: DENVER, CO

Date JAN 07 2011

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Former Sections 320, 321 and 322 of the Immigration and Nationality Act; 8 U.S.C. §§ 1431, 1432, 1433 (1991)

ON BEHALF OF APPLICANT:



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,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Denver, Colorado. The matter came before the Administrative Appeals Office (AAO) on appeal. The appeal was dismissed on July 22, 2010. The applicant filed a motion to reopen. The applicant's motion will be dismissed.

The record reflects that the applicant was born on May 18, 1982 in Nigeria. The applicant claims that he was adopted by [REDACTED] in Nigeria in 1989. [REDACTED] became a U.S. citizen upon his naturalization on July 16, 1999. [REDACTED] derived U.S. citizenship on January 4, 1977. The applicant was admitted to the United States on August 14, 1991, as an orphan coming to the United States for adoption. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship through his adoptive U.S. citizen parent.

The field office director denied the applicant's citizenship claim upon determining that the applicant did not acquire U.S. citizenship because he was over the age of 18 and therefore ineligible for citizenship under sections 320 or 322 of the Act, 8 U.S.C. §§ 1431 and 1433. The application was accordingly denied. On appeal, the applicant, through counsel, maintained that he acquired U.S. citizenship at birth through his mother under sections 301 of the Act, 8 U.S.C. § 1401, or, alternatively, that citizenship should be granted on equitable grounds because he was not advised to apply for a certificate prior to his eighteenth birthday.

The AAO dismissed the applicant's appeal upon concluding, in relevant part, that he had failed to establish that he was adopted. *See* Decision of the AAO, dated July 22, 2010. The AAO noted that the record only included a guardianship transfer document, which was not a final adoption. *Id.* The AAO further noted that the applicant was admitted to the United States as an orphan coming to the United States to be adopted, but that the record did not contain a U.S. adoption decree. *Id.* Lastly, the AAO found that the applicant was ineligible for U.S. citizenship under section 301 of the Act because he was not "born of" a U.S. citizen parent, and that he was not eligible under section 322 of the Act, 8 U.S.C. § 1433 (1991), because he was over the age of eighteen. *Id.*

The applicant, through counsel, has now filed a motion to reopen. According to the regulation at 8 C.F.R. § 103.5(a)(2), a motion to reopen must state new facts and be supported by affidavits or other documentary evidence. The applicant does not state new facts or provide any additional evidence in his motion to reopen. The motion therefore does not meet the regulatory criteria of a motion to reopen and must be dismissed.

The AAO notes further that the applicant's motion also does not meet the requirements of a motion to reconsider. The regulation at 8 C.F.R. § 103.5(a)(3) requires that a motion to reconsider 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.

The applicant, through counsel, states in his motion that the AAO erred in finding that he was not adopted despite the 1989 guardianship transfer document in the record and despite the fact that the applicant was admitted to the United States as a lawful permanent resident on the basis of his purported adoption. *See* Statement on the Form I-290B, Notice of Appeal to the AAO and Brief in Support of Motion to Reopen. The applicant again argues that he acquired U.S. citizenship under sections 301 and 322 of the Act. *See* Brief in Support of Motion to Reopen.

As noted in the AAO's decision, the applicant did not acquire U.S. citizenship pursuant to former section 301 of the Act, which provides for acquisition of U.S. citizenship at birth through a U.S. citizen parent, because he is not the biological child of a U.S. citizen. The applicant also did not acquire U.S. citizenship under former sections 320 or 321 of the Act, because there was no record of a final adoption. The AAO noted that the applicant had been admitted to the United States as an orphan coming to the United States for adoption. Finally, the AAO found that the applicant does not qualify for U.S. citizenship under former section 322 of the Act, which required the application to be approved prior to the child's eighteenth birthday, because he is over the age of 18 years.

The AAO's jurisdiction 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 regulations do not provide the AAO with authority to consider equitable claims. Like the Board of Immigration Appeals, the AAO is "without authority to apply the doctrine of equitable estoppel . . . so as to preclude [USCIS] 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). Moreover, as noted in the AAO's previous decision, 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's motion does not raise any issues not already considered by the AAO nor does the applicant cite any precedent decision to establish that the AAO's decision was based on an incorrect application of law or policy. The applicant's motion will therefore be dismissed.

**ORDER:** The motion is dismissed.