

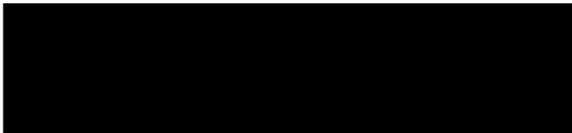
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

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FILE: [Redacted] Office: PHILADELPHIA, PA

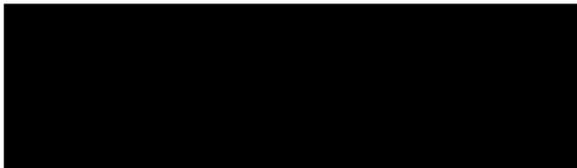
Date:

JAN 07 2011

IN RE: Applicant: [Redacted]

APPLICATION: Application for Certificate of Citizenship under Former Section 322 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (repealed).

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, Philadelphia, Pennsylvania, 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 December 30, 1974 in Korea. The applicant's was adopted on June 6, 1986 by [REDACTED]. The applicant's adopted parents are native-born U.S. citizens. The applicant was admitted to the United States as a lawful permanent resident on October 27, 1983, when he was eight years old. The applicant seeks a certificate of citizenship claiming that he derived U.S. citizenship through his adoptive parents.

The director denied the applicant's citizenship claim upon finding that the applicant did not derive U.S. citizenship through his adopted parents under former section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433, or any other provision of the Act.

On appeal, the applicant, through counsel, maintains that he derived U.S. citizenship through his native-born U.S. citizen adoptive parents. See Appeal Brief and Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO. He further claims that denial of U.S. citizenship because his adoptive parents are not naturalized amounts to an equal protection violation. *Id.* He also indicates that his Form N-400, Application for Naturalization, was "wrongfully turned away." *Id.* Counsel requests, *inter alia*, that the applicant's Form N-400 be adjudicated *nunc pro tunc* or on the basis of equitable estoppel or due process theories. See Appeal Brief at 3. Further, counsel maintains that the applicant automatically derived U.S. citizenship upon enactment of the 1978 amendments that allowed adopted children to derive U.S. citizenship. *Id.*

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The applicant has not established his eligibility for citizenship and the appeal will be dismissed for the reasons discussed below.

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 (9<sup>th</sup> Cir. 2005). The Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), which took effect on February 27, 2001, amended sections 320 and 322 of the Act, and repealed section 321 of the Act. The provisions of the CCA are not retroactive, and the amended provisions of section 320 and 322 of the Act apply only to persons who were not yet 18 years old as of February 27, 2001. Because the applicant was over the age of 18 on February 27, 2001, he is not eligible for the benefits of the amended Act. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

The applicant did not acquire U.S. citizenship at birth under section 301 of the Act, 8 U.S.C. § 1401 (1974), as that section applies only to biological children of U.S. citizens, not adopted children. See section 301(g) of the Act, 8 U.S.C. § 1401(g) (providing eligibility only to individuals "born . . . of" a U.S. citizen parent).

The applicant also did not acquire or derive U.S. citizenship under former sections 320 or 321 of the Act, 8 U.S.C. §§ 1431 and 1432, as previously in force prior to February 27, 2001, because they provided for derivation of U.S. citizenship upon the naturalization of a parent, not through a native-born U.S. citizen parent.<sup>1</sup> The AAO notes further that 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 (2<sup>nd</sup> 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.

Lastly, 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, he was required to establish pursuant to former section 322(b) of the Act that his application for citizenship was approved, and that he took the oath of allegiance, prior to his eighteenth birthday. The applicant in the present case claims to have filed an application for citizenship, but no such application was approved, and he did not take an oath of allegiance prior to his eighteenth birthday. Therefore, the applicant did not derive U.S. citizenship under former section 322 of the Act.

Counsel states that the applicant's citizenship claim should be granted *nunc pro tunc* or on equitable or due process grounds. See Appeal Brief at 3. 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

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<sup>1</sup> Former section 321 of the Act, stated, in pertinent part, that:

- (a) A child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon . . . [t]he naturalization of both parents . . . if [s]uch naturalization takes place while said child is under the age of 18 years; and [s]uch child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized . . . .
- (b) Subsection (a) of this section shall apply to an adopted child only if the child is residing in the United States at the time of naturalization of such adoptive parent or parents, in the custody of his adoptive parent or parents, pursuant to a lawful admission for permanent residence.

amendments. The regulatory authority of the AAO does not include consideration of constitutional or equitable claims or requests to submit applications or petitions *nunc pro tunc*.

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 failed to demonstrate his eligibility for citizenship under sections 301, 320, 322 or any other provision of the Act. He therefore cannot meet his burden of proof, and his appeal will be dismissed.

**ORDER:** The appeal is dismissed.