

identifying they related to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY

E2

[Redacted]

Date:

Office: NEW YORK, NY

FILE: [Redacted]

JUL 21 2011

IN RE:

Applicant: [Redacted]

APPLICATION:

Application for Certificate of Citizenship under Section 322 of the Immigration and Nationality Act; 8 U.S.C. § 1433 (2001).

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, 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 District Director, New York, New York, and 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 September 12, 1985 in Jamaica. The applicant's parents, as indicated on his birth certificate, are [REDACTED]. The applicant's parents were married in Jamaica in 1984. The applicant's mother became a U.S. citizen upon her naturalization on March 21, 2001. The applicant was admitted to the United States as a lawful permanent resident in 2006. He seeks a certificate of citizenship claiming that he derived U.S. citizenship upon his mother's naturalization pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The director denied the application, in part, upon finding that the applicant had already reached the age of 18. The director also noted that the applicant was not statutorily eligible for U.S. citizenship under section 322 of the Act because he was not residing outside the United States with his U.S. citizen parent.

On appeal, the applicant, through counsel, maintains that he timely applied for a certificate of citizenship and that he was eligible to derive U.S. citizenship pursuant to section 322 of the Act as of the date of filing of his application. *See* Applicant's Appeal Brief. Counsel claims that the applicant was only temporarily residing in the United States. *Id.* Counsel further claims that the district officer who initially adjudicated the application erred in requiring evidence of lawful permanent residence and that the application should not now be denied because of that error. *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 September 12, 2003. 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 AAO therefore finds that the applicant is ineligible for citizenship under the cited provision because he is already 18.

The applicant, through counsel, maintains that he was eligible for a certificate of citizenship on the day he filed the application. *See* Applicant's Appeal Brief. He further claims that his eligibility should be evaluated as of the date of filing the application or, alternatively, that he should be granted U.S. citizenship to further Congress' family unity goals. *Id.* Contrary to the applicant's claims, however, the statute 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. Moreover, the requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and 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.

The applicant, through counsel, further claims that the adjudicating officer erred in requesting evidence of lawful permanent residence and unreasonably delayed the adjudication of his citizenship claim. In so doing, the applicant appears to be seeking to gain U.S. citizenship by application of the doctrine of equitable estoppel. The AAO notes first that it is without authority to apply the doctrine of equitable estoppel in this or any other case. 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.

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) and (b) of the Act because he is over the age of 18. His appeal will therefore be dismissed.

ORDER: The appeal is dismissed.