

Identifying data deleted 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

DATE: **MAY 02 2011**

Office: PORTLAND, OR

FILE:

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:



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,

Jerry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Portland, Oregon, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant's immigration record reflects that he was born on July 26, 1992 in Liberia. He was adopted by John Lindberg on October 17, 2006. The applicant's adopted father is a native born U.S. citizen. The applicant seeks a certificate of citizenship claiming that he derived U.S. citizenship through his father pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The field office director denied the application upon finding that the applicant was born in 1992 and was already over the age of 18, and therefore ineligible for a certificate of citizenship under section 322 of the Act. The field office director further found that the applicant was not residing in his adopted father's custody and had not been in his adopted father's legal custody for the two year period required.

On appeal, the applicant, through counsel, maintains that he was born in 1995. The appeal brief is accompanied by an affidavit executed by the applicant's adopted father explaining that the applicant has been in his custody, despite his business-related trips. The applicant states that a bone-density test has been requested to determine his exact age. The applicant states that results of this test would be forwarded to the AAO within 30 days. On April 1, 2011, counsel requested a further extension of time in which to submit the result of the bone density test. Counsel's request will be denied.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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 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 applicant's immigration and adoption records indicate that he was born on July 26, 1992. This birth date appears on a birth certificate issued in 2006 (and listing the applicant's biological parents), as well as the applicant's Form I-600, Application to Classify Orphan as an Immediate Relative, the petition for adoption, and the affidavit of consent from the applicant's guardian. Nevertheless, the applicant's Form N-600, Application for Certificate of Citizenship, is accompanied by a birth certificate, issued in 2009, listing the applicant's adopted father and July 26, 1995 as the applicant's date of birth. In light of the more contemporaneous birth certificate, the applicant cannot establish that 1995 was his year of birth. The record indicates, by a preponderance of the evidence, that the applicant was born in 1992. He is therefore over the age of 18 years.

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 section 322 of the Act because he is already 18 years old.

The requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and that 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). 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, "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.