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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

[redacted]

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Date: MAY 11 2011 Office: LAS VEGAS, NV FILE: [redacted]

IN RE: [redacted]

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Las Vegas, Nevada, denied the Application for Citizenship and Issuance of Certificate Under Section 322 (Form N-600K) and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Australia on December 10, 1991, to married parents. The applicant's mother was born in the United States and left the country when she was four years old.. The applicant's grandmother became a naturalized U.S. citizen on September 6, 1945. The applicant seeks a Certificate of Citizenship pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The applicant filed the Form N-600K on August 17, 2009. On September 24, 2009, the field office director issued a request for further evidence (RFE) to establish the applicant's grandmother's residence in the United States for the prescribed period of time. On May 14, 2010, the field office director denied the application, finding that the applicant had already reached his eighteenth birthday. *See Decision of the Field Office Director*, dated May 14, 2010.

On appeal, the applicant contends that he was misinformed as to how to apply for citizenship through his mother and grandmother; and that he was informed that he would still be eligible for citizenship as long as he filed the application prior to attaining the age of eighteen. *See Form I-290B, Notice of Appeal*, dated June 3, 2010.

Section 322 of the Act, 8 U.S.C. § 1433, applies to children born and residing outside of the United States, and provides, in pertinent part, 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 [citizen parent] . . . .
>
> (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.

The record reflects that the applicant reached his eighteenth birthday on December 10, 2009. 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. Accordingly, the applicant is statutorily ineligible for a certificate of citizenship under these provisions because he is already 18 years old. Because the applicant is no longer under the age of eighteen, we do not reach the issues of whether or not he is residing outside of the United States in the legal and physical custody of his U.S. citizen mother, whether his grandmother met the physical presence requirements set forth in section 322(a)(2)(B) of the Act or whether he is temporarily present in the United States pursuant to a lawful admission and is maintaining such lawful status.

On appeal, the applicant essentially contends that USCIS should be equitably estopped from denying his application for a certificate of citizenship due to the agency's misinformation[1] and delay in the processing of his application. This contention lacks merit. Equitable estoppel may lie against the federal government only where it is shown to have engaged in affirmative misconduct. *INS v. Miranda,* 459 U.S. 14, 17 (1982). As the Supreme Court has explained, "Proof only that the Government failed to process promptly an application falls far short of establishing such conduct." *INS v. Miranda,* 459 U.S. 14, 19 (1982). Moreover, 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).

A person may obtain citizenship only in strict compliance with the statutory requirements imposed by Congress, and the AAO lacks the authority to use equitable powers to issue a certificate of citizenship *nunc pro tunc* when an applicant fails to meet the relevant statutory provisions. *See INS*

[1] Even if the petitioner was initially misinformed regarding the statutory requirement that the application be adjudicated and the naturalization oath be administered before an applicant's eighteenth birthday, the instructions to the Form N-600K clearly state that an applicant may only apply if he or she "will not have reached their eighteenth birthday at the time of fulfilling all of the requirements for citizenship . . ."

v. Pangilinan, 486 U.S. 875, 883-84 (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.*

The applicant bears the burden of proof in these proceedings to establish the claimed citizenship by a preponderance of the evidence. Section 322(a) of the Act, 8 U.S.C. § 1433(a); 8 C.F.R. § 322.3(b). Because the applicant has not met his burden of showing that he meets the requirements of section 322 of the Act, the appeal will be dismissed.

ORDER: The appeal is dismissed.