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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: AUG 0 6 2013 OFFICE: EL PASO, TX FILE: [redacted]

IN RE: [redacted]

APPLICATION: Application for Certificate of Citizenship under former Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Form N-600, Application for Certificate of Citizenship (Form N-600) was denied by the Field Office Director (the director), El Paso, Texas. 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 in Mexico on May 23, 1978, to unwed parents. His parents married on December 7, 1979, thereby legitimating the applicant. The applicant was admitted into the United States as a lawful permanent resident on July 30, 1979. His mother became a naturalized U.S. citizen on September 25, 1986. His father is not a U.S. citizen. The applicant presently seeks a certificate of citizenship based on the claim that he derived U.S. citizenship through his mother.

In a decision dated August 8, 2011, the director determined that the applicant failed to establish that he met the requirements for derivative citizenship under former section 321 of the Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432, or under section 320 of the Immigration and Nationality Act as amended (the Act), 8 U.S.C. § 1431. The application was denied accordingly.

On appeal the applicant concedes, through counsel, that he does not meet section 321 of the former Act requirements for U.S. citizenship. Counsel also concedes that the applicant does not meet age requirements for consideration of his claim under section 320 of the Act; however, counsel requests that the applicant be granted U.S. citizenship in the exercise of discretion based on family obligations and lengthy residence in the United States. In support of the assertions, counsel submits birth certificate, immigration and identity information for the applicant; evidence of the applicant's residence in the United States; the applicant's parent's marriage certificate; and the applicant's mother's naturalization certificate.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ,* 381 F.3d 143, 145 (3d. Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

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. The AAO, like the Board of Immigration Appeals, is without authority to apply the doctrine of equitable estoppel so as to preclude a component part of USCIS from undertaking a lawful course of action that it is empowered to pursue by statute or regulation. *See Matter of Hernandez-Puente*, 20 I&N Dec. 335, 338 (BIA 1991).

It is well established that the requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and US Citizenship and Immigration Services 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). Where an applicant has failed to establish statutory eligibility for U.S. citizenship, a certificate of citizenship cannot be issued. *See Fedorenko v. U.S.,* 449 U.S. 490, 506 (1981).

"The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth." *Chau v. INS,* 247 F.3d 1026, 1029 (9th Cir., 2000) (citations omitted). In the present matter, the applicant was born on May 23, 1978. Section 321 of the former Act citizenship provisions therefore apply to the applicant's case.

Section 321 of the former Act provided, in pertinent part, that:

> (a) A child born outside of the United States of alien parents . . . becomes a citizen of the United States upon fulfillment of the following conditions:
>
> (1) The naturalization of both parents; or
>
> (2) The naturalization of the surviving parent if one of the parents is deceased; or
>
> (3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if the child was born out of wedlock and the paternity of the child has not been established by legitimation; and if-
>
> (4) Such naturalization takes place while said child is under the age of 18 years; and
>
> (5) Such 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 under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

The evidence in the record reflects that the applicant resided in the United States as a lawful permanent resident from the age of one, and that his mother became a naturalized U.S. citizen in 1986, when the applicant was eight years old. The record lacks evidence, however, establishing that the applicant's parents have obtained a legal separation, that his father is deceased, or that his father is a naturalized U.S. citizen. Moreover, counsel concedes on appeal that the applicant does not meet the requirements for U.S. citizenship under section 321 of the former Act. The applicant therefore failed to establish that he qualifies for derivative citizenship under section 321 of the former Act.

The applicant also failed to establish that he qualifies for U.S. citizenship under section 320 of the Act, which provides, in pertinent part, that:

> (a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:
>
> (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.

(2) The child is under the age of eighteen years.

(3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

Section 320 of the Act, as amended by the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), took effect on February 27, 2001. Section 320 of the Act provisions are not retroactive and 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 consideration under section 320 of the Act. *See Matter of Rodriguez-Tejedor,* 23 I&N Dec. 153 (BIA 2001).

The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. The applicant has not met his burden of proof. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.