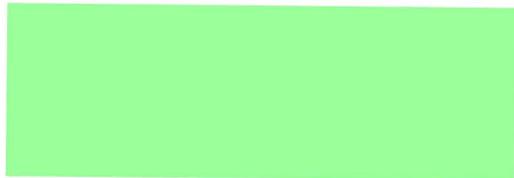


(b)(6)

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

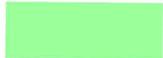


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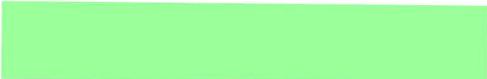
JUL 17 2013

OFFICE: BALTIMORE, MD

FILE:



IN RE:



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 (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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Form N-600K, Application for Citizenship and Issuance of Certificate Under Section 322 (Form N-600K) was denied by the District Director, Baltimore, Maryland (director), 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 in Italy on March 21, 1990 to married parents. The applicant's mother acquired U.S. citizenship at birth through a U.S. citizen parent. The applicant's maternal grandfather was born in the United States on May 27, 1917. The applicant filed a Form N-600K on November 8, 2007. She seeks a Certificate of Citizenship pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

In a decision dated March 5, 2010, the director determined that the applicant was ineligible for U.S. citizenship under section 322 of the Act, because she was not under the age of 18 when her Form N-600K application was adjudicated.¹ The application was denied accordingly.

On appeal the applicant asserts, through counsel, that she was under the age of eighteen and eligible for a certificate of citizenship when she filed her Form N-600K application. Counsel submits no new evidence on appeal. Counsel asserts, however, that because U.S. Citizenship and Immigration Services (USCIS) unreasonably delayed the processing of the applicant's Form N-600K application, the applicant should not be penalized for such delay, and that the applicant's Form N-600K application should be approved on *nunc pro tunc* equitable grounds.

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 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). 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 regulatory authority of the AAO does not include consideration of constitutional or equitable claims or requests to submit applications or petitions *nunc pro tunc*. Similarly, the AAO has no jurisdiction over unreasonable delay claims arising under the Act or pursuant to equitable or due process claims. *See generally*, 8 C.F.R. § 103.1(f)(3)(iii) (2003) and 8 C.F.R. § 2.1 (2004). *See also generally*, *Fraga v. Smith*, 607 F.Supp. 517 (D.Or. 1985) (relating to federal court jurisdiction over such claims.)

It is well established that the requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and 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). Where an applicant has failed to establish statutory eligibility

¹ The applicant turned 18 on March 21, 2008, four months and 13 days after filing the Form N-600K.

for U.S. citizenship, a certificate of citizenship cannot be issued. *See Fedorenko v. U.S.*, 449 U.S. 490, 506 (1981).

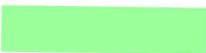
Section 322(a) of the Act, 8 U.S.C. § 1433(a), applies to children born and residing outside of the United States, and provides, in pertinent part, that:

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 [Secretary] shall issue a certificate of citizenship to such applicant upon proof, to the satisfaction of the [Secretary], 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.

In the present matter, the record reflects that the applicant reached her eighteenth birthday on March 21, 2008. Accordingly, the applicant is statutorily ineligible for a certificate of citizenship because she does not meet the age limitation set forth in section 322(a)(3) of the Act. Because the applicant is no longer under the age of eighteen, we do not reach the issues of whether she is residing outside of the United States in the legal and physical custody of her U.S. citizen mother, or whether her maternal grandfather met the physical presence requirements set forth in section 322(a)(2)(B) of the Act.

The applicant bears the burden of proof in these proceedings to establish her claimed citizenship by a preponderance of the evidence. 8 C.F.R. § 341.2(c). Because the applicant has not met her burden



of showing that she meets the requirements of section 322(a) of the Act, the appeal will be dismissed.

ORDER: The appeal is dismissed.