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

(b)(6)

DATE: SEP 18 2013 OFFICE: RALEIGH-DURHAM, NC FILE:

IN RE:

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:

SELF-REPRESENTED

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
Chief, Administrative Appeals Office

DISCUSSION: The Form N-600, Application for Certificate of Citizenship (Form N-600) was denied by the Field Office Director, Raleigh-Durham, North Carolina (the 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 Colombia to married parents on January 31, 1957. The applicant was admitted into the United States as a lawful permanent resident on December 18, 1972, when he was 15 years old. His father died on March 5, 1972, and was not a U.S. citizen. The applicant's mother became a naturalized U.S. citizen on June 10, 1975, when the applicant was 18. The applicant presently seeks a certificate of citizenship pursuant to former section 321 of the Immigration and Nationality Act (the former Act), 8 U.S.C. §1432, based on the claim that he derived U.S. citizenship through his mother.

In a decision dated November 27, 2012, the director determined that the applicant failed to establish that he was under the age of 18 when his mother became a naturalized U.S. citizen. He therefore failed to meet section 321 of the former Act age requirements for derivative citizenship. The application was denied accordingly.

On appeal the applicant asserts, first, that his mother became a naturalized U.S. citizen on January 9, 1975, when he was 17 years old, and that he therefore meets statutory age requirements contained in section 321 of the former Act. The applicant asserts further that, if it is determined that his mother became a U.S. citizen after his 18th birthday, this fact should be disregarded for equity reasons because she initially filed her naturalization petition in 1974, when the applicant was 17, and the Service unreasonably delayed processing of her application. The applicant refers to U.S. Circuit Court of Appeals decision, *Poole v. Mukasey,* 522 F.3d 259 (2nd Cir. 2008), to support his assertions. He also submits a copy of his mother's Petition for Naturalization.

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.

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.

Referring to a May 1974, Petition for Naturalization receipt date, and January 9, 1975, witness affidavits contained in the petition filed by his mother, the applicant asserts that his mother became a naturalized U.S. citizen on January 9, 1975, when he was 17, rather than on June 10, 1975.

The AAO is not persuaded by the applicant's assertions. The regulation at 8 C.F.R. § 337.9(a) provides that:

(a) An applicant for naturalization shall be deemed a citizen of the United States as of the date on which the applicant takes the prescribed oath of allegiance in an administrative ceremony or in a ceremony conducted by an appropriate court under § 337.8 of this chapter.

The naturalization certificate is presented to an applicant for U.S. citizenship at the ceremony where the oath is administered. *See* Section § 338 of the Act, 8 U.S.C. § 1449.

In the present matter the applicant's mother's naturalization certificate reflects that she became a naturalized U.S. citizen at the county court in New Jersey City, Hudson County, New Jersey on June 10, 1975, when the applicant was 18 years old. Accordingly, the applicant does not meet the age requirements for citizenship under section 321 of the former Act.

The applicant also refers to the U.S. Second Circuit Court of Appeals decision, *Poole v. Mukasey,* 522 F.3d 259, *supra,* and asserts that, if it is determined that his mother became a U.S. citizen after his 18th birthday, this fact should be disregarded for equity reasons because she initially filed her naturalization petition in 1974, when he was 17, and the Service unreasonably delayed processing of her petition.

The AAO notes first that the *Poole* decision did not hold that an applicant who does not meet statutory requirements for U.S. citizenship can derive citizenship based on equity principles. Instead, the case was remanded to the Board of Immigration Appeals for examination of whether principles of fairness entitled an applicant to citizenship in an undue processing delay case.

The AAO notes further that, like the Board of Immigration Appeals, it 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 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. *See INS v. Pangilinan*, 486 U.S. 875, 885 (1988) (stating that a person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress.) 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).

In the present matter the applicant was 18 years old when his mother became a naturalized U.S. citizen. The applicant therefore fails to satisfy the age requirements set forth in section 321 of the former Act. Accordingly, the applicant does not qualify for derivative citizenship under section 321 of the former Act.

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 in the present matter. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.