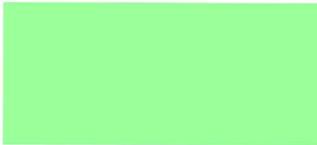




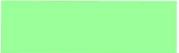
U.S. Citizenship  
and Immigration  
Services

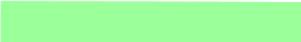
(b)(6)



Date: **JUN 02 2014**

Office: NEW YORK, NY

FILE: 

IN RE: Applicant: 

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:

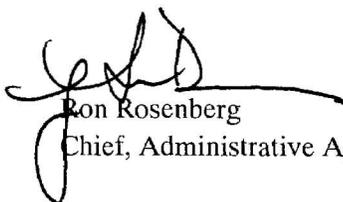


INSTRUCTIONS:

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 Director of the New York, New York District Office (the director) denied the Application for Certificate of Citizenship (Form N-600), and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

*Pertinent Facts and Procedural History*

The applicant was born in Guyana to married parents on November 11, 1980, and he was admitted into the United States as a lawful permanent resident on December 12, 1987, when he was seven years old. The applicant's mother became a naturalized U.S. citizen on June 13, 1997, when the applicant was 16 years old. His father became a naturalized U.S. citizen on June 24, 1999, when the applicant was 18 years old. The applicant presently seeks a certificate of citizenship pursuant to former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432, based on the claim that he derived citizenship through his U.S. citizen parents.

In a decision dated August 19, 2013, the director determined that the applicant was not eligible for derivative citizenship under former section 321 of the Act, because he not under the age of 18 when his father naturalized. The application was denied accordingly. On appeal, the applicant acknowledges, through counsel, that his father became a U.S. citizen after his 18<sup>th</sup> birthday. The applicant indicates, however, that this fact should be disregarded for equity reasons because his father filed his naturalization petition in 1996, when the applicant was 15, and the legacy Immigration and Naturalization Service (now U.S. Citizenship and Immigration Services (USCIS)) unreasonably delayed processing of his father's naturalization application.

*Applicable Law*

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3rd Cir. 2004). The applicable law for derivative citizenship purposes is that in effect at the time the critical events giving rise to eligibility occurred. *Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005); accord *Jordon v. Attorney General*, 424 F.3d 320, 328 (3d Cir. 2005). Former section 321 of the Act is applicable to the applicant's case.

Former section 321 of the 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 such child is unmarried and under the age of eighteen 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 (1) of this subsection, or the parent naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of eighteen years.

Because the applicant was born abroad, he is presumed to be an alien and bears the burden of establishing his claim to U.S. citizenship by a preponderance of credible evidence. *See Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008). *See also*, 8 C.F.R. § 341.2(c) (the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence.) The “preponderance of the evidence” standard requires that the record demonstrate that an applicant’s claim is “probably true,” based on the specific facts of each case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm’r. 1989)).

#### *Analysis*

It is undisputed that the applicant’s parents were and remained married prior to the applicant’s 18<sup>th</sup> birthday and when the applicant’s father became a naturalized U.S. citizen on June 24, 1999. It is also undisputed that the applicant was 18 years old at the time of his father’s naturalization. The applicant indicates, however, that the fact that his father did not become a naturalized U.S. citizen until after the applicant’s 18<sup>th</sup> birthday should be disregarded for equity reasons, because his father’s naturalization petition was filed when the applicant was 15, and USCIS unreasonably delayed processing of the petition. To support his assertions, the applicant refers to several U.S. Circuit Court of Appeals decisions. He also submits documents from his father’s immigration file, and an affidavit from his mother.

The AAO is bound by the Act, agency regulations, precedent decisions of the agency, and published decisions from the circuit court of appeals where the action arose. *See N.L.R.B. v. Ashkenazy Property Management Corp.*, 817 F.2d 74, 75 (9<sup>th</sup> Cir. 1987). The applicant’s case arises within the jurisdiction of the Second Circuit Court of Appeals (Second Circuit). While we are bound to follow the published decisions of the Second Circuit involving the same issues as presented here, the Second Circuit has not elected to publish any relevant decisions. The Second Circuit’s unpublished decisions, *Coulbourn v. Holder*, 441 F. App’x 815 (2d Cir. 2011) and

*Poole v. Holder*, 363 F. App'x 82 (2d Cir. 2010), do not support a conclusion that USCIS may exercise equitable relief or grant U.S. citizenship to an applicant who does not meet statutory requirements for citizenship.<sup>1</sup> Moreover, the AAO has no jurisdiction over unreasonable delay claims arising under the Act. *See Matter of Hernandez-Puente*, 20 I&N Dec. 335, 338 (BIA 1991) (estoppel is an equitable form of relief that is available only through the courts; an administrative tribunal (like the Board of Immigration Appeals or the AAO) is without authority to apply the doctrine of equitable estoppel so as to preclude a component part of the Service from undertaking a lawful course of action that it is empowered to pursue by statute or regulation.)

Strict compliance with statutory prerequisites is required to acquire citizenship. *See Fedorenko v. U.S.*, 449 U.S. 490, 506 (1981). The statutory terms contained in former section 321(a) of the Act clearly reflect that all of the eligibility criteria must occur prior to the child's 18<sup>th</sup> birthday. Because the applicant has failed to establish by a preponderance of the evidence that both of his parents became naturalized United States citizens prior to the applicant's 18<sup>th</sup> birthday, as required under former section 321(a)(4) of the Act, he does not qualify for derivative citizenship under former section 321 of the Act.

#### *Conclusion*

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. The appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed. The application remains denied.

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<sup>1</sup> See also *Chavarria-Calix v. Attorney Gen. of U.S.*, 510 F. App'x 130, 134 (3d Cir. 2013) where the Third Circuit Court of Appeals, citing *Mudric v. Att'y Gen.*, 469 F.3d 94, 99 (3d Cir.2006), additionally found that the requirements for invoking equitable estoppel against the government were not satisfied because mere delay does not rise to the level of "affirmative misconduct."