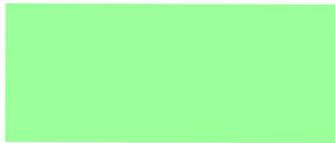


(b)(6)

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Service  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



Date: **MAY 07 2014**

Office: HARTFORD, CT

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 Hartford, Connecticut Field 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 Jamaica to unmarried parents on October 6, 1976, and he was admitted into the United States as a lawful permanent resident on December 14, 1987, when he was 11 years old. The applicant's mother became a naturalized U.S. citizen on October 21, 1994. 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 mother.

In a decision dated September 25, 2013, the director determined that the applicant was not eligible for derivative citizenship under former section 321 of the Act, because he was over the age of 18 at the time his mother naturalized. The application was denied accordingly. On appeal, the applicant contends, through counsel, that he meets the age requirements for derivative citizenship under former section 321 of the Act.

*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, therefore, applicable to this 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.

### Analysis

The issue in the present case is whether the applicant has established that his mother became a naturalized U.S. citizen prior to the applicant's 18<sup>th</sup> birthday. The record reflects that the applicant was born on October 6, 1976, which would make him the age of 18 at the time of his mother's naturalization on October 21, 1994. The applicant indicates, however, that the fact that his mother did not take the oath to become a naturalized U.S. citizen until after the applicant's 18<sup>th</sup> birthday should be disregarded for equity reasons, because her naturalization application was filed and approved by the Service when the applicant was 17, and the Service unreasonably delayed processing of her application. To support his assertions, the applicant refers to U.S. Circuit Court of Appeals decisions, *Poole v. Mukasey*, 522 F.3d 259 (2d Cir. 2008) and *Poole v. Holder*, 363 F. Appx. 82, 84 (2d Cir. 2010); *Duarte-Ceri v. Holder*, 630 F.3d 83, 98 (2d Cir. 2010); *Langhorne v. Ashcroft*, 377 F.3d 175, 178 (2d Cir. 2004); and *Calix-Chavarria v. Att'y General*, 182 F. Appx. 72 (3<sup>rd</sup> Cir. 2006). He also cites to district court decision, *Harriot v. Ashcroft*, 277 F. Supp. 2d 538 (E.D. Pa. 2003), and to a Service policy memorandum.

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). We are not bound to follow the published decision of a United States District Court in cases arising within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). We note further that we have no jurisdiction over unreasonable delay claims arising under the Act or pursuant to constitutional 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 *Fraga v. Smith*, 607 F.Supp. 517 (U.S. Dist. Ct. Or. 1985) (relating to federal court jurisdiction over such claims.) Estoppel is an equitable form of relief that is available only through the courts, and 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 the Service 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).

Section 337(a) of the Act, 8 U.S.C. § 1448(a), provides that the taking of an oath of allegiance is required for admission to U.S. citizenship ("A person who has applied for naturalization shall, in order to be and before being admitted to citizenship, take in a public ceremony . . . an oath[.]").

There is no statutory support for the applicant's claim that the approval of his mother's Application for Naturalization (Form N-400) conferred U.S. citizenship upon her, such that she became a naturalized U.S. citizen while the applicant was under the age of 18.

The applicant's case arises within the jurisdiction of the U.S. Second Circuit Court of Appeals (Second Circuit). We are therefore bound by Second Circuit precedent decisions in the present matter. Upon review, we find that neither *Poole v. Mukasey*, 522 F.3d 259, *supra*, *Poole v. Holder*, 363 F. Appx. 82, 84, *supra*, *Duarte-Ceri v. Holder*, 630 F.3d 83, 98, *supra*, nor *Langhorne v. Ashcroft*, 377 F.3d 175, 178, *supra*, held that U.S. Citizenship and Immigration Services may exercise equitable estoppel relief in a citizenship case, or grant U.S. citizenship to an applicant who does not meet statutory requirements for citizenship.<sup>1</sup>

The U.S. Supreme Court has held that 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 naturalization events must occur prior to the child's 18<sup>th</sup> birthday. *See Langhorne v. Ashcroft*, 377 F.3d 175, 178 (2d Cir. 2004). *See also, Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1994) (interpretation of statutory language begins with the terms of the statute itself, and if those terms, on their face, constitute a plain expression of congressional intent, they must be given effect.) Here, the applicant failed to establish by a preponderance of the evidence that his mother became a naturalized United States citizen prior to the applicant's 18<sup>th</sup> birthday, as required by former section 321(a)(4) of the Act. The applicant therefore failed to establish his claim to U.S. 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> The Third Circuit Court of Appeals decision, *Calix-Chavarria v. Att'y General*, 182 F. Appx. 72, *supra*; the district court decision, *Harriot v. Ashcroft*, 277 F. Supp. 2d 538, *supra*; and the Service policy memorandum submitted on appeal also do not make such a finding.