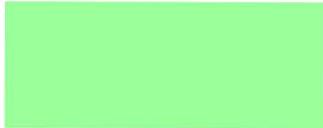




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **MAY 20 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for Certificate of Citizenship under former Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (repealed).

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 District Director of the New York, New York District Office (the director) denied the Application for Citizenship (Form N-600) and 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 on September 22, 1962 in the Dominican Republic. He attained the age of 18 on September 22, 1980. The applicant's father, [REDACTED] became a naturalized U.S. citizen on August 13, 1975, when the applicant was 12 years old. The applicant's mother, [REDACTED] became a U.S. citizen on September 16, 1981, when the applicant was 18 years old. The applicant's parents were married on July 29, 1965. The applicant obtained lawful permanent residence in the United States on December 23, 1979, when he was 17 years old.

The applicant seeks a certificate of citizenship pursuant to former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432, claiming that he derived U.S. citizenship upon his parents' naturalization.

The director denied the application finding that the applicant was over the age of eighteen when his mother naturalized. On appeal, the applicant maintains that he was under the age of eighteen when his mother filed her naturalization application and that the delay in adjudicating her application was unreasonable. *See* Appeal Brief.

Applicable Law

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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). The "preponderance of the evidence" standard requires that the record demonstrate that the applicant's claim is "probably true," based on the specific facts of each case. *See 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)).

The applicable law for derivative citizenship purposes is "the law in effect at the time the critical events giving rise to eligibility occurred." *See Minasyan v. Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005). The Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), which took effect on February 27, 2001, amended sections 320 and 322 of the Act, and repealed section 321 of the Act. The provisions of the CCA are not retroactive, and the amended provisions of section 320 and 322 of the Act apply only to persons who were not yet 18 years old as of February 27, 2001. The applicant's eighteenth birthday was in 1980. Because the applicant was over the age of 18 on February 27, 2001, he is not eligible for the benefits of the amended Act.

See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Former section 321 of the Act is therefore applicable in this case and provided, in pertinent part, that:

(a) a child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, 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.

Analysis

The applicant was over the age of eighteen when his mother naturalized. As such, he did not derive U.S. citizenship under former section 321(a)(1) of the Act. The applicant also did not derive U.S. citizenship under former section 321(a)(2) of the Act because neither of his parents was deceased, or under former section 321(a)(3) of the Act because he was legitimated upon the marriage of his parents and his parents were not divorced. *Matter of Cabrera*, 21 I&N Dec. 589 (BIA 1996)

In his appeal brief, the applicant claims that delays in processing his mother's naturalization caused her to become a U.S. citizen after the applicant's eighteenth birthday. The applicant thus seeks to gain U.S. citizenship by application of the doctrine of equitable estoppel.

The AAO, like the Board of Immigration Appeals, is "without authority to apply the doctrine of equitable estoppel against the Service [U.S. Citizenship and Immigration

Services] so as to preclude it from undertaking a lawful course of action that it is empowered to pursue by statute and regulation.” *Matter of Hernandez-Puente*, 20 I&N Dec. 335 (BIA 1991). The AAO’s appellate jurisdiction is limited, and does not include review of over unreasonable delay or due process claims. *See generally*, 8 C.F.R. § 103.1(f)(3)(iii) (2003) and 8 C.F.R. § 2.1 (2004).

In support of his claim, the applicant cites, *inter alia*, *Calix-Chavarria v. Attorney General*, 182 Fed. Appx. 72 (3d Cir. 2006) and *Poole v. Mukasey*, 522 F.3d 259 (2d Cir. 2008) as well as other cases not specific to determinations of U.S. citizenship. 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. *Poole v. Mukasey*, 522 F.3d 259, *id.* does not support a claim 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.¹

The requirements for U.S. citizenship, as set forth in the Act, are statutorily mandated by Congress, and that a certificate of citizenship can only be issued when an applicant meets the relevant statutory provisions. *See INS v. Pangilinan*, 486 U.S. 875, 885 (1988) (a person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress). Even courts may not use their equitable powers to grant U.S. citizenship, and any doubts concerning citizenship are to be resolved in favor of the United States. *Id.* at 883-84; *see also United States v. Manzi*, 276 U.S. 463, 467 (1928) (stating that “citizenship is a high privilege, and when doubts exist concerning a grant of it ... they should be resolved in favor of the United States and against the claimant”). Moreover, “it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect.” *Berenyi v. District Director, INS*, 385 U.S. 630, 637 (1967).

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 a claim that the approval of a parent’s Application for Naturalization (Form N-400) confers U.S. citizenship upon the parent, such that she or he becomes a naturalized U.S. citizen absent taking the required oath of allegiance.

Because the applicant’s mother became a U.S. citizen after he attained the age of 18, the applicant did not derive citizenship under former section 321 of the Act and is ineligible for a certificate of citizenship.

¹ *See also Poole v. Holder*, 363 F. App’x 82 (2d Cir. 2010). The Third Circuit Court of Appeals decision, *Calix-Chavarria v. Att’y General*, 182 F. Appx. 72, also does not make such a finding.

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.

ORDER: The appeal is dismissed.