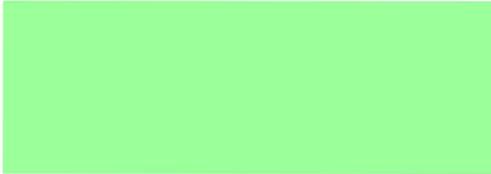




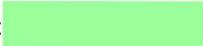
U.S. Citizenship  
and Immigration  
Services

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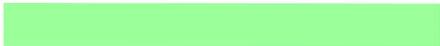


Date: **SEP 19 2014**

Office: SAN JUAN, PR

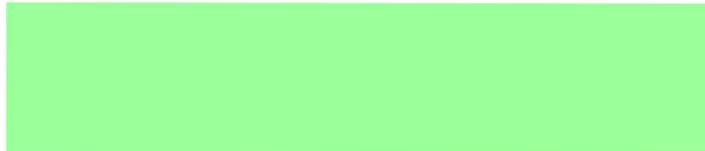
FILE: 

IN RE:

Applicant: 

APPLICATION: Application for Certificate of Citizenship under section 322 of the Immigration and Nationality Act, 8 U.S.C. § 1433

ON BEHALF OF APPLICANT:

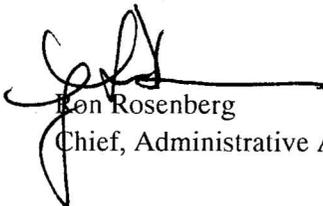


INSTRUCTIONS:

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,



Ken Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, San Juan, Puerto Rico (director) denied the applicant's Form N-600K, Application for Certificate of Citizenship and Issuance of Certificate under Section 322. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The application will remain denied.

*Pertinent Facts and Procedural History*

The applicant was born in Mexico on September 9, 1993. Her mother, [REDACTED] is a native-born U.S. citizen. The applicant's father, [REDACTED] is not a U.S. citizen. The applicant, through her mother, seeks a certificate of citizenship pursuant to section 322 of the Act, 8 U.S.C. § 1433.

The director denied the application upon finding that the applicant had already reached the age of 18. On appeal, the applicant, through counsel, maintains that she was under the age of eighteen when her mother filed the Form N-600K and that the delay in adjudicating her application was unreasonable. See Appeal Brief.

*Applicable Law*

We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). By filing this Form N-600K, the applicant's mother is seeking a certificate of citizenship for the applicant under section 322 of the Act, which provides, in pertinent part that:

(a) 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 [of the Act]. The [Secretary of Homeland Security (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 applicant [citizen parent] . . . .
- (5) The child is temporarily present in the United States pursuant to a lawful admission, and is maintaining such lawful status.

(b) Upon approval of the application (which may be filed from abroad) and, except as provided in the last sentence of section 337(a) [of the Act], upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this Act of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the [Secretary] with a certificate of citizenship.

\* \* \*

*Analysis*

The applicant's eighteenth birthday was on September 9, 2011. Her application for a certificate of citizenship was filed on August 26, 2011, two weeks prior to the applicant's eighteenth birthday.

In her appeal brief, the applicant, through counsel, claims that she is entitled to a certificate of citizenship because her application was filed prior to her eighteenth birthday and unreasonable administrative delays caused her to age out. The applicant thus seeks to gain U.S. citizenship by application of the doctrine of equitable estoppel.

It is well-established that we, like the Board of Immigration Appeals, are "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 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.

Counsel cites *In Re Petition of Tubig*, 559 F. Supp. 2 (1981) and *Harriott v. Ashcroft*, 277 F.Supp.2d 538 (2003) in support of the claim that the administrative delay and neglect caused the applicant to reach the age of 18 before her application could be approved. In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court even in matters arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719. Moreover, the cases are factually distinguishable in that the applicants in both *Tubig* and *Harriott* filed their applications months ahead of their eighteenth birthdays.

The Ninth Circuit cases also cited by counsel have been superseded by *Brown v. Holder*, 11-71458, 2014 WL 4056527 (9th Cir. Aug. 18, 2014). In *Brown*, the Ninth Circuit reaffirmed that citizenship may not be granted on equitable grounds, and only where a constitutional violation has occurred may a court consider a government misconduct claim. See *Brown*, at \*6 (citing *Montana v. Kennedy*, 366 U.S. 308 (1961), *INS v. Miranda*, 459 U.S. 14 (1982), and *INS v. Hibi*, 414 U.S. 5 (1973)).

The requirements for U.S. citizenship, as set forth in the Act, are statutorily mandated by Congress, and 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). Section 322(a)(3) of the Act requires the child to be under the age of 18 when a certificate of citizenship is issued. The applicant is currently 21 years old and is therefore ineligible to receive a certificate of citizenship under section 322 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.

**ORDER:** The appeal is dismissed.