

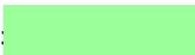


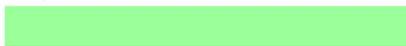
U.S. Citizenship  
and Immigration  
Services

(b)(6)



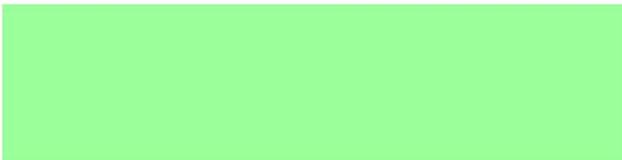
Date: **SEP 24 2014** Office: PHOENIX, AZ

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:

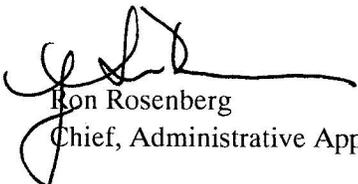


INSTRUCTIONS:

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,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Phoenix, Arizona (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 Canada on April 10, 1995. Her father, [REDACTED] is a native-born U.S. citizen. The applicant's mother is not a U.S. citizen. The applicant, through her father, 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 Form N-600K was filed, that she alerted U.S. Citizenship and Immigration Services (USCIS) of her upcoming eighteenth birthday, and that the delay in adjudicating her application caused her to age out. *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 April 10, 2013. She is over the age of eighteen and therefore ineligible for a certificate of citizenship under section 322 of the Act.

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 maintains that the handling of the application violated USCIS' internal guidelines. *See* Appeal Brief (citing a January 2, 1996 Instructions Memorandum). In *Brown v. Holder*, 11-71458, 2014 WL 4056527 (9th Cir. Aug. 18, 2014), 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 Court in *Brown* held that "the mere failure of an agency to follow its regulations is not a violation of due process." *Id.* at \*4 (stating that *Brown's* claim fails "insofar as [it] relies only on the supposed failure . . . to follow . . . regulations and operating procedures. . .").

Counsel cites *Gulotti v. Holder*, 486 Fed. Appx. 219, 222 (2d Cir. 2012) and *Harriott v. Ashcroft*, 277 F.Supp.2d 538 (2003) in support of the claim that an applicant who is under the age of eighteen at the time of filing is eligible under the statute, and that the application cannot be denied merely because of administrative delay. See Appeal Brief at 5. The AAO is bound to follow the broad precedential authority of the case law of a United States published circuit court decision. *Gulotti* is not published precedent, and *Harriott* is the decision of a United States district court. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a court 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.

Additionally, the cited cases do not support the applicant's claim. The Second Circuit denied the writ of mandamus in *Gulotti* and, thereby, affirming the denial of the citizenship application. Moreover, *Gulotti* involved only the question of the requirement for temporary presence in the United States and not the age requirement at issue in this case. Counsel omits the beginning of footnote 2 in *Gulotti* and suggests that the case supports the applicant's claim that an application should be granted merely because it was filed prior to the applicant's eighteenth birthday. See *Gulotti*, 486 Fed. Appx. At 222 fn.2 (noting that "[t]he District Court went on, in *dicta*, to express doubt . . ."). Counsel's reliance on *Gulotti* is misplaced.

Similarly, *Harriott* provides limited support for the applicant's affirmative misconduct claim. As previously noted, the jurisdiction of the AAO is limited, and does not include estoppel claims. See generally, 8 C.F.R. § 103.1(f)(3)(iii) (2003) and 8 C.F.R. § 2.1. 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).

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).

### *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.