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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: AUG 18 2015

FILE #:
APPLICATION RECEIPT #:

IN RE: Applicant:

APPLICATION: Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act; 8 U.S.C. § 1431

ON BEHALF OF APPLICANT:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Form I-290B, Notice of Appeal or Motion, **within 33 days of the date of this decision.** The Form I-290B website (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Applicant, a native of the Dominican Republic, seeks a Certificate of Citizenship. Immigration and Nationality Act (INA, or the Act) § 320, 8 U.S.C. § 1431. The Field Office Director, Newark, New Jersey, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The record reflects that the Applicant was born in the Dominican Republic on to unwed parents, both citizens of the Dominican Republic. The record includes a copy of the Applicant's birth certificate which lists the Applicant's father. The Applicant's father entered the United States on March 7, 1998, and married the Applicant's stepmother on The Applicant's father subsequently became a U.S. citizen through naturalization on The Applicant's stepmother filed a Form I-130, Petition for Alien Relative, on the behalf of the Applicant on December 2, 1996. On October 23, 2005, the Applicant entered the United States with an immigrant visa and was granted lawful permanent residency in the United States as the stepchild of a U.S. citizen. The Applicant seeks a certificate of citizenship claiming that she derived U.S. citizenship from her father pursuant to section 320 of the Act, 8 U.S.C. § 1431.

The Field Office Director determined that the Applicant did not enter the United States as a lawful permanent resident while she was under the age of 18, as required by section 320 of the Act. The Form N-600, Application for Certificate of Citizenship, was denied accordingly. *See Decision of the Field Office Director*, dated January 8, 2014.

On appeal, the Applicant claims that her entry to the United States as a lawful permanent resident on October 23, 2005, when she was over 18 years of age, should not defeat her claim for derivative citizenship due to the inexplicable delay by the U.S. government between the approval of the Form I-130 on December 16, 1996 and the issuance of her visa on October 17, 2005.

We conduct appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

Because the Applicant was born abroad, she is presumed to be an alien and bears the burden of establishing her 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). Section 320 of the Act, as amended by the Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (CCA), applies to this appeal because the Applicant was not yet 18 years old as of the February 27, 2001 effective date of the CCA. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 156 (BIA 2001) (en banc).

Section 320(a) of the Act, 8 U.S.C. § 1431(a), provides:

A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:

(1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.

(2) The child is under the age of eighteen years.

(3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

Section 101(c) of the Act, 8 U.S.C. § 1101(c) states, in pertinent part, that for Title III naturalization and citizenship purposes:

> The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere . . . if such legitimation . . . takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating . . . parent or parents at the time of such legitimation . . . .

The record establishes that the Applicant qualifies as a "child" under section 101(c) of the Act. In *Matter of Cabrera*, 21 I&N Dec. 589, 592 (BIA 1996), the Board of Immigration Appeals (BIA) found that a child residing or domiciled in the Dominican Republic may qualify as a legitimated child once his or her father acknowledges paternity in accordance with Dominican law. Article 21 of the Dominican Code for the Protection of Children (DCPC), which relates to proof of filiation, states that "[s]ons and daughters born out of wedlock may be acknowledged individually by their father either when the birth occurs, or by means of a will, or by a public instrument." *Cabrera, supra,* at FN 1. The BIA, citing a Library of Congress legal opinion, noted that "the law took effect on January 1, 1995, and applies to all 'present and future legal situations' and to 'legal situations that were established and created before the promulgation of the ... law and continue in existence after such promulgation.'" *Cabrera*, 21 I. & N. Dec. at 590.

In the present matter, the record demonstrates that the Applicant's birth certificate, registered on July 7, 1987, while noting that both parents were single, includes the name of her father, thus her father acknowledged the Applicant as his child. Furthermore, pursuant to the BIA's holding in *Matter of Cabrera,* the Applicant's legitimation was effective on January 1, 1995, date the DCPC took effect. As the Applicant was under 16 years of age on that date, we find the Applicant has established that she is the legitimated child of her father for purposes of section 101(c)(1) of the Act.[1]

[1] We note that the issue of whether the Applicant's father had legal custody of the Applicant has not been fully explored in the record, and therefore, we decline to make a finding on this specific issue.

The record further establishes that the Applicant's father became a U.S. citizen through naturalization on when the Applicant was years of age.

However, the record shows that the Applicant was over the age of 18 at the time she was admitted for lawful permanent residence on October 23, 2005. Because the applicant was not "under the age of eighteen years" when she obtained lawful permanent resident status, she does not meet the requirements set forth in sections 320(a)(2) and (3) of the Act.

On appeal, the applicant contends that, due to an inexplicable and egregious delay by the U.S. government in processing her immigrant visa application, she should be relieved of the requirement that she enter the United States before her eighteenth birthday and be allowed to derive citizenship through the naturalization of her father.

The record indicates that the Applicant's stepmother filed the Form I-130 on her behalf on December 2, 1996, and the petition was approved on December 16, 1996. The record further includes a copy of a Form DS-230, Application for Immigrant Visa and Alien Registration (Form DS-230), which the applicant signed and swore to at the U.S. Consulate in Santo Domingo, Dominican Republic on . The Applicant's immigrant visa was issued on and she was admitted as a lawful permanent resident to the United States on approximately nine months after she attained the age of 18.

Although the applicant claims the U.S. government is solely responsible for the delay, the record does not contain evidence reflecting the reason that the issuance of the Applicant's visa was delayed. There is no documentation in the record indicating that the Applicant submitted a Form DS-230 to the U.S. Consulate prior to the copy included in the record and dated We note that on an Immigration Judge issued a Subpoena requiring the U.S. Department of State to produce the immigrant visa application, associated documents, and pertinent information concerning the processing of the Applicant's immigrant visa. At this time, there is no evidence of any responsive documents in the record.

The Applicant contends that she and her parents did everything in their power to ensure the expeditious adjudication of her immigrant visa application; however, the Applicant did not produce any evidence in support of this contention. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The Applicant cites *Poole v. Mukasey*, 522 F.3d 259 (2nd Cir. 2008), in support of her claim that she should be granted derivative citizenship due to an inexplicable delay in granting her immigrant visa, stating that the United States Court of Appeals for the Second Circuit (Second Circuit) in *Poole* held that "an inexplicable delay" in the processing of an application was sufficient ground for remand. We note that the Second Circuit in *Poole,* in denying *en banc* rehearing, "recognized that Poole's claim "appears to fail to satisfy the timing requirement of subsection 1432(a)(4)"' and that the case was "remanded so that the [Board of Immigration Appeals] could consider whether the delay in

processing the mother's application, submitted when Poole was sixteen, '*might* be some basis for relieving Poole' of the timing requirement." *See Poole v. Mukasey, supra,* at 259 (emphasis in original, internal citations omitted). Furthermore, the Applicant does not discuss the Second Circuit's subsequent findings in the same matter, which do not support her assertions. After the BIA, on remand, subsequently dismissed Poole's derivative citizenship claim, the Second Circuit did not grant derivative citizenship, but instead, denied Poole's petition for review. In the denial, the Second Circuit found,

> Petitioner argues that the BIA incorrectly held that it does not have the power to grant derivative citizenship nunc pro tunc. Even assuming *arguendo* that the BIA does have this power, however, petitioner has presented no evidence that the delay in processing his mother's naturalization application was 'untoward' or that his mother took any action to expedite the application in light of petitioner's age.

Poole v. Holder, 363 F. App'x 82, 83 (2d Cir. 2010). In this case, similar to the appellant in *Poole,* the Applicant has not provided any evidence on the reasons for the delay in processing. Regardless, we also find that we do not have the authority to grant derivative citizenship on a nunc pro tunc or equitable basis.

The Applicant cites *Calix-Chavarria v. Attorney General*, 182 Fed. Appx. 72 (3d Cir. 2006), noting that the U.S. Circuit Court of Appeals for the Third Circuit (Third Circuit) analogized the "aging out" protection provisions of the Child Status Protection Act (CSPA), Pub. Law No. 107-208, 116 Stat. 927 (Aug. 6, 2002). However, the CSPA, as codified at section 201(f) of the Act, 8 U.S.C. § 1151, applies to beneficiaries of petitions submitted under section 204 of the Act, 8 U.S.C. § 1154. There are no corresponding "age-out" provisions under section 320 of the Act and USCIS has no discretion to waive the requirements of the statute. We also note that again, the Applicant did not take into account subsequent findings in the matter. After the Third Circuit remanded the case to the BIA, and the BIA declined to apply equitable estoppel or nunc pro tunc relief, the Third Circuit held that "exercising either [remedy] in this circumstance would constitute an impermissible equity-based departure from the strict requirements set forth by Congress." *Chavarria-Calix v. Attorney Gen. of U.S.*, 510 F. App'x 130, 133 (3d Cir. 2013).

It is well established that the requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and United States Citizenship and Immigration Services (USCIS) lacks statutory authority to issue a certificate of citizenship when an applicant fails to meet the relevant statutory provisions set forth in the Act. A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 885 (1988). Even courts may not use their equitable powers to grant 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).

It is the applicant's burden to establish the claimed citizenship by a preponderance of the evidence Section 341(a) of the Act, 8 U.S.C. § 1452(a); 8 C.F.R. § 341.2(c). Here, that burden has not been met.

ORDER: The appeal is dismissed.