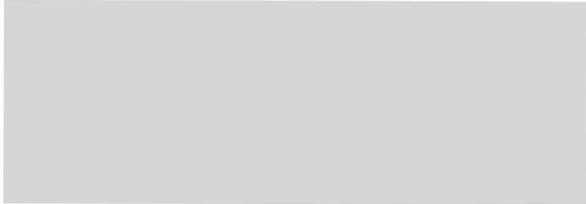




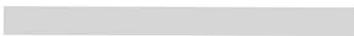
U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **AUG 28 2015**

FILE #: 

IN RE: Applicant: 

APPLICATION: Application for Certificate of Citizenship pursuant to Former Section 321(a) of the Immigration and Nationality Act, 8 U.S.C. § 1432(a)(repealed).

ON BEHALF OF APPLICANT:

NO REPRESENTATIVE OF RECORD

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 Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Philadelphia, Pennsylvania, Field Office Director (the director) cancelled the applicant's certificate of citizenship and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal is dismissed.

The record reflects that the applicant was born on [REDACTED] in Trinidad. The applicant was adopted by [REDACTED] and [REDACTED] on February 7, 1989, when the applicant was [REDACTED] years old. The applicant's adoptive mother and father were born in Trinidad and became U.S. citizens upon naturalization on October 9, 1979 and December 17, 1975, respectively. The applicant was admitted to the United States as a lawful permanent resident on November 16, 1990, when the applicant was [REDACTED] years old. The applicant sought a certificate of citizenship claiming that he derived U.S. citizenship through his adoption by U.S. citizen parents. Legacy Immigration and Naturalization Service (INS) approved the application on July 11, 1991.

The director issued a Notice of Intent to Cancel (NOIC) the applicant's certificate of citizenship pursuant to section 342 of the Act, 8 U.S.C. § 1453, based on evidence that the applicant was ineligible to derive U.S. citizenship because the applicant was not residing in the United States in the custody of his adoptive parents at the time of his parents' naturalizations. *See Notice of Intent to Cancel*, dated December 6, 2012. The notice informed the applicant that he had resided in Trinidad until he first arrived in the United States as a nonimmigrant visitor on September 5, 1988 and could not, therefore, have been residing in the United States in the custody of his adoptive parents at the time of his parents' naturalizations in 1975 and 1979. *Id.* Accordingly, the director indicated that it would not be possible for him to have derived U.S. citizenship. *Id.*

In response to the NOIC, the applicant filed copies of documents already in the record and claimed citizenship under former section 322 of the Act, 8 U.S.C. § 1433. The director determined that the applicant did not address his ineligibility for derivative citizenship under former section 321(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432(b). Specifically, the director found that the applicant did not address the fact that he was not residing in the United States at the time of his parents' naturalizations in 1975 and 1979. The director then addressed the applicant's claim under former section 322 of the Act, noting that this section of the law was not applicable to the applicant because the applicant's parent(s) did not file a Form N-643, Application for Certificate of Citizenship of Behalf of an Adopted Child, and the applicant did not take the oath of allegiance prior to attaining the age of eighteen (18). The director entered an order administratively cancelling the applicant's certificate of citizenship. *See Notice of Cancellation of Certificate of Citizenship*, dated January 29, 2013. On appeal, the applicant contends that the director erred in cancelling his certificate of citizenship. *See Form I-290B, Notice of Appeal or Motion*, received August 1, 2014¹; and *Letter in Support of Appeal*, dated July 28, 2014.

We conduct appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d 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.

¹ The appeal was not forwarded to us until after March 16, 2015, when the Form I-290B was officially received after approval of the applicant's Form I-912, Request for Fee Waiver.

2005). Because the applicant was over the age of 18 when the Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000) amendments went into effect, former sections 320, 321 and 322 of the Act, as in effect prior to the enactment of the CCA, is the applicable law in this case. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001).

On appeal, the applicant contends that he acquired U.S. citizenship under former section 322 of the Act and that the delay in his oath of allegiance should not be determinative of his eligibility. As discussed below, whether the applicant's oath of allegiance was issued after the applicant's eighteenth (18) birthday due to a delay in service by Legacy INS is not the principle reason why the applicant is ineligible for acquired citizenship under former section 322 of the Act.

Former section 320 of the Act applies to children born outside the United States one of whose parents was a U.S. citizen at the time of the child's birth:

- (i) A child born outside of the United States, one of whose parents at the time of the child's birth was an alien and the other of whose parents then was and never thereafter ceased to be a citizen of the United States, shall, if such parent is naturalized, become a citizen of the United States, when
 - (1) such naturalization takes place while such child is under the age of 18 years; and
 - (2) such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of naturalization or thereafter and begins to reside permanently in the United States while under the age of 18 years.

As such, former section 320 of the Act is not applicable in this case as neither of the applicant's adoptive parents were U.S. citizens at the time of the applicant's birth in [REDACTED]

Former section 322 of the Act, 8 U.S.C. § 1433, applies to children born and residing outside of the United States, and 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. The Attorney General shall issue a certificate of citizenship to such applicant upon proof, to the satisfaction of the Attorney General, 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 [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), 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 Attorney General with a certificate of citizenship.

The applicant is not eligible for acquisition of U.S. citizenship under former section 322 of the Act because his adopted parent(s) did not file an a Form N-643, Application for Certificate of Citizenship of Behalf of an Adopted Child, on his behalf before his eighteenth birthday. On appeal, the applicant contends that the delay in his oath of allegiance should not be determinative of his eligibility because it was due to Legacy INS' delay in adjudicating his application and administration of the oath. The applicant contends that his case is similar to Tubig, 559 F. Supp. 2 (N.D. Cal 1981), in which Legacy INS was estopped from denying an application for naturalization for a child over the age of eighteen (18) when legacy INS failed to expedite the application when it was filed on behalf of a child who was turning eighteen (18) years old within a short period of time after the filing. However, as discussed above, the applicant's parents never filed a Form N-643 on his behalf. As such, whether the applicant's oath of allegiance was due to a delay by Legacy INS has no bearing on the case before us. The director correctly determined that section 322 of the Act is inapplicable to this case and that former section 321 of the Act, in effect at the time the applicant became a lawful permanent resident in 1991, is applicable in this case.

Former section 321(a) of the Act provides, in pertinent part:

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.

(b) Subsection (a) of this section shall apply to an adopted child *only if the child is residing in the United States at the time of naturalization of such adoptive parent or parents*, in the custody of his adoptive parent or parents, pursuant to a lawful admission for permanent residence.

(Emphasis added).

Former section 321 of the Act provides for acquisition of U.S. citizenship upon the naturalization of a parent, not through a native-born U.S. citizen parent or already naturalized parent. The record reflects that the applicant's adopted parents were naturalized prior to his adoption and residence in the United States. More importantly, the plain language of subsection (b) of former section 321 of the Act requires that an adopted child, like the applicant, establish that he was residing in the United States, in his adoptive parents' custody, at the time of their naturalization. *See Smart v. Ashcroft*, 401 F.3d 119, 123 (2nd Cir. 2005). The applicant's parents naturalized in 1975 and 1979. The applicant began residing in the United States in 1988, and he became a lawful permanent resident in 1991. Therefore, the applicant was not residing in the United States, pursuant to a lawful permanent resident admission, in the custody of his adopted parents "at the time of [his or her] naturalization." Thus, the applicant was not eligible for derivation or acquisition of U.S. citizenship under former sections 320, 321, or 322 of the Act, or any other provision of law and the director correctly determined that the applicant's application for certificate of citizenship had been approved in error.

Administrative cancellation of a certificate of citizenship is authorized under section 342 of the Act, which provides in pertinent part:

The Attorney General is authorized to cancel any certificate of citizenship . . . if it shall appear to the Attorney General's satisfaction that such document or record was illegally or fraudulently obtained from, or was created through illegality or by fraud practiced upon, him or the Commissioner or a Deputy Commissioner; but the person for or to whom such document or record has been issued or made shall be given at such person's last-known place of address written notice of the intention to cancel

such document or record with the reasons therefor and shall be given at least sixty days in which to show cause why such document or record should not be canceled.

Under the applicable regulations, a notice of intent to cancel a certificate of citizenship must contain:

allegations of the reasons for the proposed action and shall advise the person that he may submit, within 60 days of service of the notice, an answer in writing under oath or affirmation showing cause why the certificate . . . should not be canceled, that he may appear in person before a naturalization examiner in support of, or in lieu of his written answer, and that he may have present at that time, without expense to the Government, a [qualified] attorney or representative

8 C.F.R. § 342.1. During administrative cancellation proceedings, the USCIS officer “may receive in evidence any oral or written statement which is material and relevant to any issue in the case previously made by the respondent or by any other person during any investigation, examination, hearing, trial, proceeding, or interrogation.” 8 C.F.R. § 342.5(d).

On appeal, the applicant contends that the director erred in cancelling his certificate of citizenship because he did not obtain it through fraud or misrepresentation. However, the record reflects that the director did not cancel the applicant’s certificate of citizenship because it was obtained through fraud or misrepresentation. The director’s NOIC provided the applicant with the reasons for the proposed action, as required by statute and regulation. Section 342 of the Act; 8 C.F.R. § 342.1. The notice fully informed the applicant of the information pertinent to his claim and the statute provides that a certificate of citizenship may be cancelled “if it shall appear to the [director’s] satisfaction that such document or record was *illegally* or fraudulently obtained from, or was created through *illegality* or by fraud practiced upon.” (Emphasis added) Section 342 of the Act. The Ninth Circuit has held that failure to comply with the imposed prerequisites to the acquisition of citizenship renders a certificate of citizenship “illegally procured,” and the Attorney General may revoke or cancel the certificate of citizenship. *See Friend v. Reno*, 172 F.3d 638 (9th Cir. 1999). As in *Friend v. Reno*, the applicant’s certificate of citizenship was issued in error, through no fault of his own, revoked by the Attorney General because he did not meet a prerequisite for acquisition of citizenship, and such revocation is based on clear and convincing evidence. *Id.*; *see also Schneiderman v. United States*, 320 U.S. 118, 122, 63 S.Ct. 1333, 87 L.Ed. 1796 (1943); *Fedorenko v. United States*, 449 U.S. 490, 506, 101 S.Ct. 737, 66 L.Ed.2d 686 (1981); *Lee Hon Lung v. Dulles*, 261 F.2d 719, 723 (9th Cir.1958) (“[A] certificate is “illegally procured” ... if it is later determined that an essential finding of fact in the naturalization proceeding was erroneous.”). This holding is in keeping with the general principle that “[n]o alien has the slightest right to naturalization unless all statutory requirements are complied with,” and that Congress has the right “not to grant a United States citizen the right to transmit citizenship by descent.” *Rogers*, 401 U.S. at 830, 91 S.Ct. 1060 (quoting *United States v. Ginsberg*, 243 U.S. 472, 475, 37 S.Ct. 422, 61 L.Ed. 853 (1917)). Again, the director need not find that the certificate of citizenship was obtained through fraud or misrepresentation. The director may cancel a certificate of citizenship if the applicant was never entitled to a certificate of citizenship because he was ineligible at the time of adjudication and the certificate of citizenship was issued in error.

Alternatively, the applicant essentially contends that USCIS should be equitably estopped from cancelling his certificate of citizenship because (1) his brother also obtained a certificate of citizenship which has yet to be cancelled and (2) USCIS waited 22 years before cancelling his certificate. These contentions are not persuasive. Like the Board of Immigration Appeals, we are “without authority to apply the doctrine of equitable estoppel against the Service 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, 338 (BIA 1991). Our jurisdiction is limited to that authority specifically granted through the regulations at Volume 8 of the Code of Federal Regulations (8 C.F.R.) section 103.1(f)(3)(iii) (as in effect on February 28, 2003) and subsequent amendments.

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.