



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAY 28 2015**

FILE #: [REDACTED]
APPLICATION RECEIPT #: [REDACTED]

IN RE: Applicant: [REDACTED]

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 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 Field Office Director, [REDACTED] Florida denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Jamaica on [REDACTED]. The applicant was admitted to the United States as a lawful permanent resident on [REDACTED], when he was 12 years old. The applicant's eighteenth birthday was on [REDACTED]. The applicant's mother became a U.S. citizen upon her naturalization on [REDACTED]. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship through his mother pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The director determined that the applicant was ineligible for a certificate of citizenship because he was over the age of eighteen at the time his mother became a naturalized U.S. citizen, and denied the applicant's Form N-600, Application for Certificate of Citizenship, accordingly. *See Decision of the Field Office Director*, dated September 18, 2012.

On appeal, filed on October 17, 2012 and received by the AAO on May 5, 2015, the applicant contends that he is entitled to U.S. citizenship as he was under the age of eighteen when his mother filed her naturalization application and that the delay in adjudicating her naturalization application was without cause or explanation.

We conduct 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). 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 case 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.

The evidence of record fails to demonstrate that the applicant is eligible for a certificate of citizenship because he does not satisfy section 320(a)(2) of the Act, which requires the U.S. citizen parent's naturalization to occur prior to the child's eighteenth birthday. While the applicant's mother submitted her Form N-400, Application for Naturalization, to USCIS when the applicant was seventeen years old, she did not become a U.S. citizen until after the applicant turned eighteen.

On appeal, the applicant asserts that USCIS was informed in the applicant's mother's Form N-400 and by the applicant's mother that the applicant would "age out" unless the swearing in for her naturalization was conducted before [REDACTED] the 18th birthday of the applicant. The applicant further asserts that USCIS is estopped from denying the applicant's Form N-600 as the mother's naturalization 61 days after the applicant's 18th birthday may not necessarily bar derivative U.S. citizenship for the applicant where the government, without cause or explanation, delayed his mother's naturalization case past his 18th birthday. In support of this assertion, the applicant cites *Poole v. Mukasey*, 522 F.3d 259 (2d Cir. 2008), petition for review denied, *Poole v. Holder*, 363 Fed.Appx. 82 (2d Cir. 2010), *Calix-Chavarria v. Attorney General*, 182 Fed. Appx. 72 (3d Cir. 2006), and *Lewis v. McElroy*, 294 Fed.Appx. 637 (2d Cir. 2008).

The applicant's reliance on *Poole v. Mukasey*, *supra*, is misplaced. First, we note that we are not bound by a decision of the Second Circuit Court of Appeals as this case arises within the Eleventh Circuit. Moreover, the Court 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).

We note that the other two cases cited by applicant's counsel, *Calix-Chavarria v. Attorney General*, 182 Fed. Appx. 72 (3d Cir. 2006), and *Lewis v. McElroy*, 294 Fed.Appx. 637 (2d Cir. 2008), are non-precedent, unpublished decisions, and therefore are not binding. Further, *Poole v. Mukasey*, 522 F.3d 259, and the two unpublished decisions cited by counsel were remanded to the BIA for consideration of whether an applicant would be eligible to derive citizenship when the applicant is over the age of 18 when his parent becomes a naturalized U.S. citizen due to a delay in the naturalization process of the parent. These decisions did not hold 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.

The applicant further asserts that the applicant's age for acquisition of U.S. citizenship purposes under section 320(a) of the Act is protected by the Child Status Protection Act (CSPA) provisions. 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 are bound by the Act, agency regulations, precedent decisions of the agency, and published decisions from the circuit court of appeals where the action arose. *See N.L.R.B. v. Ashkenazy Property Management Corp.*, 817 F.2d 74, 75 (9th Cir. 1987). We note further that we have no jurisdiction over unreasonable delay claims arising under the Act or pursuant to constitutional due process claims. *See generally*, 8 C.F.R. § 103.1(f)(3)(iii) (2003) and 8 C.F.R. § 2.1 (2004). *See also Fraga v. Smith*, 607 F.Supp. 517 (U.S. Dist. Ct. Or. 1985) (relating to federal court jurisdiction over such claims.) Estoppel is an equitable form of relief that is available only through the courts, and the AAO, like the Board of Immigration Appeals, is without authority to apply the doctrine of equitable estoppel so as to preclude a component part of USCIS from undertaking a lawful course of action that it is empowered to pursue by statute or regulation. *See Matter of Hernandez-Puente*, 20 I&N Dec. 335, 338 (BIA 1991).

As noted by the U.S. Supreme Court: “There must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship.” *Fedorenko v United States*, 449 U.S. 490, 506 (1981).

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.