



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF C-T-R-

DATE: JULY 1, 2016

APPEAL OF BOSTON, MASSACHUSETTS FIELD OFFICE DECISION

APPLICATION: FORM N-600, APPLICATION FOR CERTIFICATE OF CITIZENSHIP

The Applicant, a native and citizen of the Dominican Republic, seeks a Certificate of Citizenship. *See* Immigration and Nationality Act (the Act) section 321, 8 U.S.C. § 1432, *repealed by* Sec. 103(a), title I, Child Citizenship Act of 2000, Pub. L. No. 106-395, 114 Stat. 1631 (2000). An individual born outside the United States who acquired U.S. citizenship at birth, or who automatically derived U.S. citizenship after birth but before the age of 18, may apply to receive a Certificate of Citizenship. An individual who was born to foreign national parents between December 24, 1952, and February 27, 1983, must meet the last of certain conditions by February 26, 2001, in order to establish derivative citizenship. The individual must show that he or she is residing in the United States as a lawful permanent resident, and that both parents became naturalized U.S. citizens before the individual turned 18.

The Field Office Director, Boston, Massachusetts, denied the application. The Director concluded that the Applicant did not automatically derive citizenship under former section 321 of the Act, because only the Applicant's father naturalized before the Applicant's 18th birthday. The Director also found that the Applicant did not derive citizenship pursuant to section 320 of the Act, 8 U.S.C. § 1431, because he was over 18 when the law went into effect on February 27, 2001.

The matter is now before us on appeal. In the appeal, the Applicant does not contest that he was over the age of 18 when his mother naturalized. The Applicant asserts, however, that his application merits retroactive approval because former Immigration and Naturalization Service (INS), now U.S. Citizenship and Immigration Services (USCIS), unreasonably delayed the naturalization of the Applicant's mother beyond his 18th birthday, thus depriving the Applicant of the benefit of derivative citizenship.

Upon *de novo* review, we will dismiss the appeal.

I. FACTS AND PROCEDURAL HISTORY

The Applicant was admitted to the United States as a lawful permanent resident in 1996. In 2012, he was placed in removal proceedings for criminal activity. The Applicant sought termination of the proceedings based on a theory of equitable estoppel, claiming that if the Department of Homeland Security (DHS) did not delay the naturalization of his mother, the Applicant would have derived U.S. citizenship through her. While in removal proceedings, the Applicant filed the Form N-600,

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Application for Certificate of Citizenship. The Director determined, however, that the Applicant did not establish derivative citizenship and denied the application. Shortly after the Form N-600 was denied, an Immigration Judge ordered the Applicant removed from the United States, finding his claim of equitable estoppel to be without merit. The Applicant appealed the judge's decision to the Board of Immigration Appeals (the Board), reasserting that DHS should have been equitably estopped from alleging in removal proceedings that the Applicant was not a U.S. citizen. The Board dismissed the appeal agreeing with the Immigration Judge that equitable estoppel was not applicable in the Applicant's case. In dismissing the Applicant's appeal, the Board relied on its previous holding in *Matter of Hernandez-Puente*, 20 I&N Dec. 335, 338-39 (BIA 1991), that "the Board itself and the immigration judges 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." Moreover, the Board found that even if the doctrine of equitable estoppel applied, it would not have been warranted in the Applicant's case. The Applicant was removed from the United States on [REDACTED] 2016.

II. LAW.

The record reflects that the Applicant was born on [REDACTED] in the Dominican Republic to unmarried foreign national parents. The Applicant was admitted to the United States as a lawful permanent resident on July 1, 1996. The Applicant's father became a U.S. citizen through naturalization on September 15, 1998. The Applicant's mother was naturalized on August 16, 1999, when the Applicant was over 18.

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). In this case, the last critical event, the naturalization of the Applicant's mother, occurred on August 16, 1999, when former section 321 of the Act was in effect. The Child Citizenship Act of 2000 (the CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000), which took effect on February 27, 2001, repealed section 321 of the Act and amended sections 320 and 322 of the Act. However, the provisions of the CCA are not retroactive, and the amended sections 320 and 322 of the Act apply only to individuals who were not yet 18 years old as of February 27, 2001. Because the Applicant was over the age of 18 on February 27, 2001, he is not eligible for the benefits of the amended Act. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Therefore, the Applicant's citizenship claim must be considered under the provisions of former section 321 of the Act.

Former section 321 of the Act provided in pertinent part that:

- (a) A child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, 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 under the age of 18 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 18 years.

III. ANALYSIS

As stated above, in order to establish derivative citizenship under former section 321 of the Act, the Applicant must show that both his parents naturalized while the Applicant was under the age of 18. The Director determined that the Applicant did not derive citizenship under former section 321 of the Act because he was over the age of 18 when the second of his parents, the Applicant's mother, naturalized on August 16, 1999.

On appeal, the Applicant does not contest that he does not satisfy the age requirement for derivative citizenship of former section 321(a)(4) of the Act, as there is no dispute that he was over 18 at the time of his mother's naturalization. Further, the Applicant does not assert, and the record does not establish, that he is eligible to derive citizenship solely through his father under the provisions of former section 321(a)(2) or 321(a)(3) of the Act. Specifically, the Applicant's mother was not deceased when his father naturalized and, as the Applicant's parents were never married, the Applicant cannot show that he resided in his father's legal custody following the legal separation of the parents.¹ Accordingly, the only issue in these proceedings is whether the Applicant may be issued a Certificate of Citizenship retroactively, as he asserts, despite statutory ineligibility. Upon review of the entire record, we conclude that USCIS does not have authority to issue such certificate to an applicant who is statutory ineligible for U.S. citizenship.

The Applicant states that his mother applied for naturalization in 1997, when the Applicant was 16, and the former INS neglected to adjudicate her naturalization application before the Applicant's 18th birthday, thus depriving him of derivative citizenship. The Applicant asserts that for this reason he

¹ The term, "legal separation" means "either a limited or absolute divorce obtained through judicial proceedings." See *Matter of H*, 3 I&N Dec. 742, 744 (BIA 1949).

should be granted U.S. citizenship *nunc pro tunc* under the doctrine of equitable estoppel. In support of this assertion, the Applicant references a decision of the U.S. District Court for the Eastern District of Pennsylvania, *Harriott v. Ashcroft*, 277 F. Supp.2d 538 (E.D. Pa. 2003), and states that inexplicable neglect of the government's ministerial duties and disregard for their own internal guidelines demands application of the doctrine of estoppel in his case. In addition, the Applicant cites a decision of the U.S. Circuit Court of Appeals for the First Circuit (First Circuit), *Costa v. INS*, 233 F.3d 31 (1st Cir. 2000), which explains the elements of an equitable estoppel claim.

Like the Board of Immigration Appeals, we do not have authority to apply the doctrine of equitable estoppel against USCIS. See *Matter of Hernandez-Puente*, *supra*. Our jurisdiction is limited to that authority specifically granted through the regulations in Title 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.

The Applicant cites the U.S. District Court's holding in *Harriott v. Ashcroft*, *supra*, in support of his claim that the administrative delay and neglect in processing of his mother's naturalization merits retroactive grant of U.S. citizenship. However, we are not bound to follow the published decisions of federal district courts even in cases arising within the same district. Although we may consider the reasoning underlying a district judge's decision, the decision is not binding on us as a matter of law. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Furthermore, we find that *Harriott v. Ashcroft* is not applicable to the matter before us. In that case, the District Court found, in part, that the delay in adjudication of an application for derivative citizenship filed under section 322 of the Act, 8 U.S.C. § 1433, violated the INS internal guidelines requiring eligibility determination in all cases within 60 days and expedited processing for children approaching 18 years of age. The Court estopped INS from denying the application and ordered INS to approve the application *nunc pro tunc*. Here, the Applicant does not assert delay in adjudication of his Form N-600, but rather a delay in processing of his mother's naturalization application.

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). The Applicant's proceedings fall within the jurisdiction of the First Circuit, which has not ruled on the issue of whether a delay in processing of a parent's naturalization application, which causes the parent to naturalize after his or her child turns 18, may equitably estop USCIS from denying an application for a Certificate of Citizenship based on determination that the child was over 18 when the parent naturalized. As the Board pointed out in its decision dismissing the Applicant's appeal, to date only the U.S. Court of Appeals for the Second Circuit (Second Circuit), addressed derivative citizenship claim based on equitable estoppel. See *Poole v. Mukasey*, 522 F.3d 259 (2d Cir. 2008). In that case, a foreign national also alleged that he lost eligibility to derive citizenship due to the DHS's delay of his mother's naturalization. His equitable estoppel claim was ultimately dismissed as there was "no evidence that the delay in processing [the] mother's naturalization application was 'untoward' or that [the] mother took any action to expedite the application in light of the petitioner's age." See *Poole v. Holder*, 363 Fed. Appx. 82, 83 (2d Cir. 2010). Under related First Circuit law, "INS delay in processing an application for adjustment of status, even if negligent, does not prevent it from denying application of petitioner who becomes statutorily ineligible during period of delay." See

Mahabir v. Ashcroft, 387 F.3d 32, 36 (1st Cir. 2004) (citing *INS v. Miranda*, 459 U.S. 14, 18 (1982)). As we have no jurisdiction over the Applicant's equitable estoppel claim, we do not reach the issue of whether he has satisfied the elements of such claim enumerated in *Costa v. INS*, *supra*.

The requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress and USCIS does not have authority to issue a Certificate of Citizenship to an applicant who does not meet those statutory requirements for citizenship. 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). The statutory provisions of former section 321 of the Act clearly state that in order to establish derivative citizenship, all of the eligibility criteria must be satisfied prior to the child's 18th birthday. Because the Applicant has not shown that both of his parents became naturalized U.S. citizens prior to his 18th birthday, as required under former section 321(a)(4) of the Act, the Applicant has not established eligibility for derivative citizenship under former section 321 of the Act.

IV. CONCLUSION

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). The Applicant has not met that burden. Accordingly, we dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of C-T-G-*, ID# 16232 (AAO July 1, 2016)