

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

EG

FILE:

Office: OKLAHOMA CITY, OK

Date:

JUL 07 2008

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting Field Office Director, Oklahoma City, Oklahoma, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on October 20, 1968 in Portugal. She was adopted on October 2, 1984, at the age of 15, by [REDACTED] and [REDACTED]. Mr. and Mrs. [REDACTED] are native-born U.S. citizens. The applicant was admitted to the United States as a lawful permanent resident on July 7, 1970. The applicant claims that she acquired U.S. citizenship through her parents and seeks a certificate of citizenship pursuant to section 322 of the former Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The acting field office director denied the application finding that the applicant did not derive U.S. citizenship from her parents because she was over 18 years of age, and no longer eligible for derivative citizenship under section 322 of the former Act. The application was denied accordingly.

The CCA amended sections 320 and 322 of the Act, and repealed section 321 of the former Act. The CCA became effective on February 27, 2001, and is not retroactive. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). The amended provisions of the Act apply only to persons 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, she is not eligible for the benefits of section 320 or 322 of the amended Act.

“The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child’s birth.” *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9th Cir. 2000) (citations omitted). The applicant in this case was born in 1968. The former Act therefore applies to the applicant’s case.

Sections 320 and 321 of the former Act relate to the derivation of U.S. citizenship upon the naturalization of a parent.¹ These sections are inapplicable to the applicant’s case because her parents are both native-born U.S. citizens. Section 322 of the former Act, 8 U.S.C. § 1433, provides, in relevant part, that:

(a) Application of citizen parents; requirements

A parent who is a citizen of the United States may apply to the Attorney General [now the Secretary of Homeland Security, “Secretary”] for a certificate of citizenship on behalf of a child born outside the United States. The Attorney General [Secretary] shall issue such a certificate of citizenship upon proof to the satisfaction of the Attorney General [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 child is physically present in the United States pursuant to a lawful admission.

¹ The AAO notes that the Act of October 5, 1978, Pub.L. No. 95-417, 92 Stat. 917, allows adopted children to derive U.S. citizenship if they are residing in the United States pursuant to a lawful admission for permanent residence “at the time of naturalization of such adoptive parent.”

(3)The child is under the age of 18 years and in the legal custody of the citizen parent.

(b) Attainment of citizenship status; receipt of certificate

Upon approval of the application . . . [and] upon taking and subscribing before an officer of the Service within the United States to the oath of allegiance required by this chapter of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the Attorney General [Secretary] with a certificate of citizenship.

Section 322 of the former Act thus requires that the application for certificate of citizenship be filed, adjudicated, and approved, and that the Oath of Allegiance be administered, prior to the applicant's 18th birthday. The applicant turned 18 years of age on October 20, 1986. The AAO therefore finds that the applicant is ineligible for citizenship under section 322 of the former Act.

It is well established that the requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and CIS 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).

8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. In order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is "probably true" or "more likely than not." *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). The applicant in this case has not met her burden and the appeal will therefore be dismissed.

ORDER: The appeal is dismissed.