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

U.S. Citizenship and Immigration Services

E6

[redacted]

FILE: [redacted] Office: SAN ANTONIO, TX Date: JUN 0 2 2009

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under Section 322 of the Immigration and Nationality Act; 8 U.S.C. § 1433.

ON BEHALF OF APPLICANT:

[redacted]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Ellen C. Johnson

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, San Antonio, Texas, 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 August 31, 1989 in Mexico. The applicant's parents, as indicated in her birth certificate, are and . The applicant's mother acquired U.S. citizenship at birth through her U.S. citizen father, the applicant's grandfather. The applicant presently seeks a certificate of citizenship claiming that she derived U.S. citizenship through her mother pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The district director denied the application on October 15, 2008, finding that the applicant was not in her mother's legal custody as required by section 322(a)(4) of the Act, 8 U.S.C. § 1433(a)(4). The finding was based on a notation on the applicant's parents' divorce decree indicating that the applicant had been adopted by her aunt. On appeal, the applicant claims that she was not adopted and that she was indeed in her mother's custody.

The AAO first notes that the Child Citizenship Act of 2000 (CCA), which took effect on February 27, 2001, amended sections 320 and 322 of the Act, and repealed section 321 of the Act. The provisions of the CCA are not retroactive, and the amended provisions of section 320 and 322 of the Act apply only to persons who were not yet 18 years old as of February 27, 2001. The applicant's 18th birthday was on August 31, 2007. Because the applicant was under the age of 18 on February 27, 2001, she is eligible for the benefits of the amended Act. *See Matter of Rodriguez-Tejedor,* 23 I&N Dec. 153 (BIA 2001). Nevertheless, as discussed below, the applicant did not acquire citizenship under section 322 of the Act, 8 U.S.C. § 1433, or any other provision of the Act.[1]

Section 322 of the Act, 8 U.S.C. § 1433, applies to children born and residing outside of the United States, and provides 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--

[1] The applicant is not a lawful permanent resident of the United States. Thus, section 320 of the Act, 8 U.S.C. § 1431, is inapplicable to her citizenship claim.

(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 applicant [citizen parent] (or, if the citizen parent is deceased, an individual who does not object to the application).

(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.

(c) Subsections (a) and (b) shall apply to a child adopted by a United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

The record in this case reflects that the applicant reached the age of 18 on August 27, 2007. Sections 322(a)(3) and 322(b) of the Act, 8 U.S.C. §§ 1433(a)(3) and (b), and the regulations at 8 C.F.R. § 322.2(a)(3), require that a certificate of citizenship application be filed, adjudicated, and approved with the oath of allegiance administered before the child's 18th birthday. The applicant is already 18 years old. The AAO therefore finds that the applicant is ineligible for citizenship under the cited provision.[2]

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[2] The AAO notes that the field office director prematurely administered the Oath to the applicant prior to her 18th birthday. The application had not been approved at the time as required by section 322(a)(4) of the Act, 8 U.S.C. § 1433(b).

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). The applicant in this case is statutorily ineligible for citizenship under section 322 of the act, 8 U.S.C. § 1433, because she is over the age of 18 years. Her application therefore cannot be approved, and the AAO need not address the issue of her legal custody prior to her 18th birthday.

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). As noted above, the applicant is statutorily ineligible to obtain a certificate of citizenship under section 322 of the Act, 8 U.S.C. § 1433, because she is over the age of 18 years. Her application cannot be approved. Thus, the applicant has failed to meet her burden of proof and her appeal will be dismissed.

ORDER: The appeal is dismissed.