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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

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U.S. Citizenship  
and Immigration  
Services

EC

FILE:

Office: NEW YORK, NY

Date:

JUN 02 2009

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.

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).

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, New York, New York, 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 September 14, 1990 in Yemen. The applicant's father was a U.S. citizen, naturalized on November 21, 1972. He passed away in 2004. The applicant's mother is not a U.S. citizen. The applicant presently seeks a certificate of citizenship claiming that she derived U.S. citizenship through her father 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 over the age of 18 years and therefore ineligible for citizenship under section 322 of the Act, 8 U.S.C. § 1433. The AAO notes that the application was filed on or about September 10, 2008, four days prior to the applicant's 18<sup>th</sup> birthday.

On appeal, the applicant first claimed that her application should have been adjudicated and approved in the four days between its filing and her 18<sup>th</sup> birthday. On January 12, 2009, the applicant, through counsel, submitted a "Revised Brief on Appeal," wherein she requests that her case be remanded for consideration under section 301 of the Act, 8 U.S.C. § 1401.

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 18<sup>th</sup> birthday was on September 14, 2008. 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.<sup>1</sup>

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:

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<sup>1</sup> 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.

(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 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 September 18, 2008. Section 322(a)(3) of the Act, 8 U.S.C. § 1433(a)(3) and the regulations promulgated thereunder, 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 18<sup>th</sup> birthday. The AAO therefore finds that the applicant is ineligible for citizenship under the cited provision because she is already 18.

The AAO notes that the applicant filed her application four days prior to her 18<sup>th</sup> birthday. Nevertheless, 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 AAO therefore may not consider the applicant's argument that her case ought to have been adjudicated before her 18<sup>th</sup> birthday. Such equitable claims are irrelevant to her statutory eligibility for citizenship.

As noted above, the applicant now claims that she is entitled to a certificate of citizenship pursuant to section 301 of the Act, 8 U.S.C. § 1401. Section 301(g) of the Act, 8 U.S.C. § 1401(g), states in pertinent part, that the following shall be nationals and citizens of the United States at birth:

(g) a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was 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: *Provided*, That any periods of honorable service in the Armed Forces of the United States . . . by such citizen parent . . . may be included in order to satisfy the physical-presence requirement of this paragraph.

The applicant is required to establish that her father was physically present in the United States for five years prior to her birth (in 1990), two of which after his 14<sup>th</sup> birthday (in 1953). The AAO notes that the applicant was likewise required to submit evidence of her father's five years of physical presence (two of which were after 1953) in support of her claim of citizenship under section 322 of the Act, 8 U.S.C. § 1433. The applicant included with the Form N-600, Application for Certificate of Citizenship, a listing of dates indicating that her father was, in relevant part, present in the United States, intermittently, from 1972 until 1996. The AAO notes that there is no documentary evidence supporting the applicant's claim that her father was present in the United States as indicated. The AAO further notes that the applicant's father's 1972 naturalization certificate is not in the record.

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. Moreover, the applicant has not submitted any evidence of her father’s physical presence in support of her citizenship claim.<sup>2</sup> Thus, the applicant has failed to meet her burden of proof and her appeal will be dismissed.

**ORDER:** The appeal is dismissed.

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<sup>2</sup> The AAO finds that the applicant had ample opportunity to submit the required evidence of physical presence initially and on appeal. A remand of her case is therefore not warranted.