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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

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FILE:



Office: HARLINGEN, TX

Date: OCT 06 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).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Harlingen, 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 9, 1989 in Mexico. The applicant's mother acquired U.S. citizenship at birth through her father, the applicant's grandfather. The applicant's grandfather was born in St. Louis, Missouri. The applicant presently seeks a certificate of citizenship claiming that she derived U.S. citizenship through her mother and grandfather pursuant to section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433, as amended by the Child Citizenship Act of 2000 (CCA), Pub. L. No. 106-395, 114 Stat. 1631 (Oct. 30, 2000).

The field office director denied the application finding that the applicant was residing in the United States and was therefore ineligible for citizenship under section 322 of the Act, 8 U.S.C. § 1433.

On appeal, the applicant, through counsel, maintains that her citizenship claim should be granted *nunc pro tunc* because she fulfilled the requirements of section 322 of the Act as of the date of her citizenship interview. See Applicant's Appeal Brief.

Section 322 of the Act, 8 U.S.C. § 1433, was amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA benefits all persons who have not yet reached their 18th birthdays as of February 27, 2001. CCA § 104; *Matter of Rodriguez-Tejedor*, 23 I & N Dec. 153 (BIA 2001). Because the applicant was under the age of 18 on February 27, 2001, she meets the age requirement for benefits under the CCA.

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—

(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 AAO notes that, whether or not an applicant satisfies the requirements set forth in section 322(a) of the Act, she is required to establish that her application for citizenship was approved, and that she took the oath of allegiance, prior to her 18th birthday. *See* Section 322 (a) and (b) of the Act, 8 U.S.C. § 1433(a) and (b). The applicant filed her application for a certificate of citizenship on July 23, 2007, a few days before her 18th birthday. The applicant turned 18 years of age on August 9, 2007. She cannot fulfill the requirements of section 322(b) of the Act because her application was not approved, and she was not administered the oath of allegiance, prior to her 18th birthday.

The applicant claims that she should be granted U.S. citizenship *nunc pro tunc*. The AAO notes first that it is without authority to consider equitable claims in this or any other appeal case. The AAO, like the Board of Immigration Appeals, is “without authority to apply the doctrine of equitable estoppel against the Service [USCIS] so as to preclude it from undertaking a lawful course of action that it is empowered to pursue by statute and regulation.” *Matter of Hernandez-Puente*, 20 I&N Dec. 335, 338 (BIA 1991). The jurisdiction of the AAO is limited to that authority specifically granted through the

regulations at Volume 8 of the Code of Federal Regulations (8 C.F.R.) section 103.1(f)(3)(iii) (as in effect on Feb. 28, 2003) and subsequent amendments.

It is well established that the requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and USCIS 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 citizenship claim ought to be granted retroactively. Such equitable claims are irrelevant to her statutory eligibility for citizenship.

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 former Act, 8 U.S.C. § 1433, because she is over the age of 18 years. Thus, the applicant has failed to meet her burden of proof and the appeal will be dismissed.

ORDER: The appeal is dismissed.