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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

**PHOTOCOPY**

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[Redacted]

FILE: [Redacted] Office: NEWARK, NJ Date: **OCT 06 2009**

IN RE: Applicant: [Redacted]

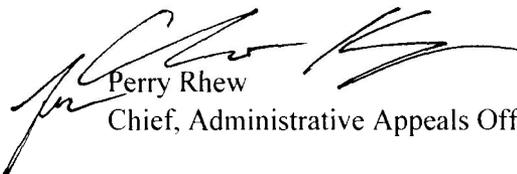
APPLICATION: Application for Certificate of Citizenship under Section 322 of the former Immigration and Nationality Act; 8 U.S.C. § 1433 (2000).

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).

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Newark, New Jersey, 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 5, 1968 in Ukraine. The applicant's grandmother was a native-born U.S. citizen, born in Youngstown, Ohio in 1917. The applicant claims that his father acquired U.S. citizenship at birth. He presently seeks a certificate of citizenship claiming that he derived U.S. citizenship through his father and grandmother 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. 106-395, 114 Stat. 1631 (Oct. 30, 2000).

The field office director denied the application 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.

On appeal, the applicant, through counsel, indicates that his father was unaware of his U.S. citizenship until after the applicant's 18<sup>th</sup> birthday and that his citizenship claim should be granted *nunc pro tunc*. See Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO.

The AAO first notes that the 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 was over 18 when the CCA was enacted and is therefore not eligible for benefits under the amended Act. See *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). Section 322 of the former Act, 8 U.S.C. § 1433 (2000), is therefore applicable to the applicant's case.

Section 322 of the former Act provided, in pertinent part, that:

(a) A parent who is a citizen of the United States may apply to the Attorney General [now the Secretary, 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.
- (3) The child is under the age of 18 years and in the legal custody of the citizen parent.

(b) 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.

The AAO notes that, whether or not an applicant satisfies the requirements set forth in section 322(a) of the former Act, he is required to establish that his application for citizenship was approved, and that he took the oath of allegiance, prior to his 18<sup>th</sup> birthday. *See* Section 322(a) and (b) of the former Act, 8 U.S.C. § 1433(a) and (b) (2000). The AAO finds that the applicant in the present case did not meet the requirements set forth in section 322(b) of the former Act, because he did not apply for a certificate of citizenship before he turned 18, because no such application was approved, and because he did not take an oath of allegiance prior to his 18<sup>th</sup> birthday.

The applicant claims that he 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 (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 his citizenship claim ought to be granted retroactively. Such equitable claims are irrelevant to his 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 he is over the age of 18 years. Thus, the applicant has failed to meet his burden of proof and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.