



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 26984832

Date: MAY 9, 2023

Appeal of Boston, Massachusetts Field Office Decision

Form N-600K, Application for Citizenship and Issuance of Certificate Under Section 322

The Applicant's father, a naturalized U.S. citizen seeks a Certificate of Citizenship on the Applicant's behalf under section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The Director of the Boston, Massachusetts Field Office denied the Form N-600K after conducting an in-person interview with the Applicant and her father. The Director determined that the Applicant was not eligible for a Certificate of Citizenship under section 322 of the Act, because she did not establish that her father was a U.S. citizen at the time she was born. The matter is now before us on appeal.

On appeal, the Applicant's father points out that section 322 of the Act does not require that the child be born to a U.S. citizen, and asserts that the Director's decision was incorrect. He further states that although the Applicant is now over the statutory age of 18 years,¹ she met all of the requirements under section 322 of the Act before her 18th birthday and the Form N-600K should be approved pursuant to the doctrine of equitable estoppel.

The Applicant's father bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

Section 322(a) of the Act provides, in pertinent part that 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 and the Secretary of Homeland Security shall issue a certificate of citizenship to such an applicant upon proof, that the applicant meets all of the conditions in that section and is "under the age of 18 years" as mandated by section 322(a)(3) of the Act.

As an initial matter, we agree that a child does not need to have been born to a U.S. citizen parent to qualify for a Certificate of Citizenship under section 322 of the Act. Rather, as stated, the child must satisfy all relevant conditions in that section, which include having "[a]t least one parent [who] is a

¹ The record reflects that the Director denied the Form N-600K, and the Applicant's father filed the instant appeal after the Applicant had already turned 18 years old.

citizen of the United States, whether by birth or naturalization” before turning 18 years of age. Section 322(a)(1) of the Act. There is no dispute that the Applicant satisfied this condition, because she was born abroad in 2004, and her father naturalized as a U.S. citizen in 2006, when she was two years old. Accordingly, we withdraw the Director’s determination to the contrary.

The Applicant’s father asserts that the Applicant also met the remaining requirements in section 322 of the Act before her 18th birthday, because she was residing abroad in his legal and physical custody and was temporarily present in the United States pursuant to a lawful admission in June 2022 for her scheduled Form N-600K interview, and qualified for issuance of a Certificate of Citizenship at the time. Unfortunately, because the Applicant is now over the age limit set forth in section 322(a)(3) of the Act, she is statutorily ineligible for such a certificate regardless of whether she may have fulfilled all the other requirements in section 322 of the Act before she was 18 years old.

The father states further, referencing a Pennsylvania U.S. District Court’s decision in *Harriott v. Ashcroft*, 277 F. Supp. 2d 538 (E.D. Pa. 2003)² that even though the Applicant no longer meets the statutory age requirement in section 322 of the Act, U.S. Citizenship and Immigration Services (USCIS) should nevertheless issue a Certificate of Citizenship to her nunc pro tunc pursuant to the doctrine of equitable estoppel due to the unreasonable delay in processing the Form N-600K and the incorrect basis for the denial.

We acknowledge the father’s statement. However, we are bound by the Act, agency regulations, precedent decisions of the agency, and published decisions from the circuit court of appeals where the action arose. *See N.L.R.B. v. Ashkenazy Properly Management Corp.*, 817 F.2d 74, 75 (9th Cir. 1987). Furthermore, the requirements for citizenship are statutorily mandated by Congress and we do not have authority to issue a Certificate of Citizenship to an applicant who does not meet those statutory requirements for such a certificate. 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).

Lastly, and more importantly there is no delegation of authority, statute, regulation, or other law that allows us to apply the doctrine of equitable estoppel to the cases before us; rather, estoppel is an equitable form of relief that is available only through the courts. *See Matter of Hernandez-Puente*, 20 I&N Dec. 335, 338-39 (BIA 1991). Consequently, we cannot grant the father’s request for a nunc pro tunc approval of the Form N-600K he filed on the Applicant’s behalf.

In conclusion, the Applicant is not eligible for issuance of a Certificate of Citizenship under section 322 of the Act because she is over 18 years old. Moreover, as we are without authority to grant the relief the Applicant’s father requests, the Form N-600K will remain denied.

ORDER: The appeal is dismissed.

² The District Court found, in part, that the delay in adjudication of a Form N-600K filed under section 322 of the Act, 8 U.S.C. § 1433, violated the former Immigration and Naturalization Service (INS) internal guidelines requiring expedited processing and eligibility determinations for all cases involving children approaching 18 years of age. The District Court estopped INS from denying the application and ordered INS to approve it nunc pro tunc.