Comment on OMB Control No. 1615-0057 (N-600)

Under the part of the form instructions entitled **"Who Should File This Form"**, it should be understood that the N-600 may be used primarily[1] by anyone who **is** a United States Citizen but who happened to have been born outside of the United States. This citizenship status may have come into being at the time of birth or at some point after birth.

Prior to the passage of the Child Citizenship Act of 2000 (CCA), the terminology was either **acquisition**-meaning that citizenship was transmitted to a child born abroad of a qualified USC parent, *or* **derivation**-meaning a child got second-hand naturalization when the qualified parent or parents naturalized. Lastly, there was a special form of **expedited naturalization** of a child under former INA § 322 which applied to either adopted children of USCs or children of either a natural-born or naturalized USC who did not acquire or derive under another section of law. Such expedited naturalization was previously processed through a child attending the parents' naturalization proceedings and also taking the oath and getting a certificate by riding on the parent's N-400 with a supplement form (I believe it was an N-602?). Later, INS created the form N-643 (also now obsolete). Currently, USCIS has the separate form N-600K for expedited naturalization of a child under current INA § 322.

CCA introduced new terminology by coining the descriptive term ***automatic acquisition***, which supplanted the term **derivation** but is sometimes found to be confusing because it does not have the same meaning of the prior term **acquisition**.

Under item #1 in that section of the form instructions, the applicants described are those who **acquired** citizenship at birth under INA §§ 301, 309, or some former section of law going all the way back to Revised Statutes § 1993 enacted April 14, 1802.

[1] There is also a slim possibility of an individual born in the United States to have lost citizenship through her marriage and is seeking to re-acquire it but at this point in history, this is an obscure situation. Also, one can seek to re-acquire lapsed citizenship due to having failed to meet now repealed retention requirements.

Under item #2 in that section of the form instructions, the applicants described are those who **derived** (under a prior law such as former INA §§ 320 or 321) *or* ***automatically acquired*** (under current INA § 320). That citizenship was achieved by an action of law at some point after birth but by a certain cut-off age. The critical cut-off age has changed over time. It is currently 18 years old. A "child" can still ***automatically acquire*** through age 17 years and 364 days old.

Item #2 also contains a parenthetical such that a parent or legal guardian may file on behalf of the citizenship claimant. The parenthetical is applicable across the board to all citizenship claimant of under any statute.

In the past, the question of child's age for acquisition, derivation of citizenship by an action of law, or retention of citizenship has fluctuated. In addition, the child's age in relation to matters of adoption, paternal recognition or acknowledgement, and legitimation have had varying age requirements. For all these reasons, the task of crafting adequate form instructions which are in essence a precursor to, or meant to go in tandem to, the dilution and displacement of regulations is not simple. It is also because of these same reasons that some type of disclaimer and/or catch-all language is a necessary evil. I like to think of these statements as "weasel words", "back doors", or "escape routes". The N-600 form instructions are in need of better disclaimer statements.

The proposed new form instructions make reference to the "Law In Effect At The Time Of Your Birth" and this is a welcome addition but it is not complete. The alternative legal standard should also be stated as to the "Law In Effect At The Time The Critical Events Giving Rise To Eligibility Occurred" is also applicable to the N-600.

Claim to USC At Birth Abroad:

"The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth." *Chau* v. *Immigration and Naturalization Service, 247* F.3d 1026, 1029 (9th Cir. 2000) (citations omitted).

Derivative Citizenship Claim through Parents' Naturalization:

The applicable law for derivative citizenship purposes is "the law in effect at the time the critical events giving rise to eligibility occurred." *Minasyan* ***v.*** *Gonzales*, 401 F.3d 1069, 1075 (9th Cir. 2005); *accord Jordon* ***v.*** *Attorney General*, 424 F.3d 320, 328 (3rd Cir. 2005).

The section of the form instructions entitled **"Required Evidence"** seems to have removed too much of the former language that parroted 8 CFR § 320.3(b):

> (2) If the Service requires any additional documentation to make a decision on the application for certificate of citizenship, applicants may be asked to provide that documentation under separate cover or at the time of interview. **Applicants do not need to submit documents that were submitted in connection with: An application for immigrant visa and retained by the American Consulate for inclusion in the immigrant visa package, or an immigrant petition or application and included in a Service administrative file. Applicants should indicate that they wish to rely on such documents and identify the administrative file(s) by name and alien number. The Service will only request the required documentation again if necessary.**

Evidentiary Burden and Burden of Proof:

"There must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship." *Fedorenko v. United States*, 449 U.S. 490, 506 (1981). 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).

A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 *U.S.* 875, 884 (1988). Moreover, "it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect" and that any doubts concerning citizenship are to be resolved in favor of the United States. *Berenyi v. District Director, INS*, 385 U. S. 630, 637 (1 967). The applicant must meet this burden by establishing the claimed citizenship by a preponderance of the evidence. 8 C.F.R. § 341.2(c).

Matter of Chawathe, 25 I&N Dec. 369 (AAO 2010) held, in pertinent part:

> (3) In most administrative immigration proceedings, the applicant must prove by a preponderance of evidence that he or she is eligible for the benefit sought.[2]
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> (4) Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant has satisfied the standard of proof. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989), followed.
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> (5) If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

[2]Although not footnoted in the Precedent Decision, for the source of that see *U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring).