



EA

U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE: [Redacted]

Office: Philadelphia

Date:

APR 18 2001

IN RE: Applicant:



APPLICATION:

Application for Certificate of Citizenship under § 341(a) of the
Immigration and Nationality Act, 8 U.S.C. 1452(a)

IN BEHALF OF APPLICANT: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Identifying data deleted to
prevent clearly unwarranted
disclosure of personal privacy

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting District Director, Philadelphia, Pennsylvania, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on May 7, 1970 in the United Kingdom. The applicant's father, [REDACTED] was born in Jamaica in September 1944 and never became a U.S. citizen. The applicant's mother, [REDACTED] was born in Trinidad in April 1943 and became a naturalized United States citizen in March 1985. The applicant's parents married each other in December 1967. The applicant's status was adjusted to that of a lawful permanent resident on September 9, 1980. The applicant claims eligibility for a certificate of citizenship under § 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1432.

The record reflects that the applicant's mother became a lawful permanent resident on January 19, 1978. The applicant remained with his father in Jamaica until his father immigrated to the United States. The applicant indicates that his parents reside apart from each other and he has not presented any evidence of a legal separation or divorce.

The acting district director determined the applicant failed to establish that there had been a legal separation of his parents as held in Matter of H--, 3 I&N Dec. 742 (BIA 1949). The acting district director then denied the application accordingly.

On appeal, the applicant requests an additional 30 days in which to submit additional evidence or a written brief in support of his appeal. More than 30 days have elapsed since the appeal was filed on December 18, 2000 and no additional documentation has been entered into the record. Therefore, a decision will be entered based on the present record.

Section 321. CHILD BORN OUTSIDE OF UNITED STATES OF ALIEN PARENT;
CONDITIONS UNDER WHICH CITIZENSHIP AUTOMATICALLY ACQUIRED

(a) A child born outside of the United States of alien parents, or of an alien parent and a citizen parent who has subsequently lost citizenship of the United States, becomes a citizen of the United States upon fulfillment of the following conditions:

- (1) The naturalization of both parents; or
- (2) The naturalization of the surviving parent if one of the parents is deceased; or
- (3) The naturalization of the parent having legal custody of the child when there has been a legal separation of the parents or the naturalization of the mother if the child was born out of wedlock and

the paternity of the child has not been established by legitimation; and if-

(4) Such naturalization takes place while said child is under the age of 18 years; and

(5) Such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of the naturalization of the parent last naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of 18 years.

In Matter of Fuentes, 21 I&N Dec. 893 (BIA 1997), the Board stated the following: "Through subsequent discussions, [the interested agencies] have agreed on what we believe to be a more judicious interpretation of § 321(a). We now hold that, as long as all the conditions specified in § 321(a) are satisfied before the minor's 18th birthday, the order in which they occur is irrelevant."

The record establishes that (1) the applicant's mother became a naturalized U.S. citizen prior to the applicant's 18th birthday, and (2) the applicant was residing in the United States in his mother's legal custody as a lawful permanent resident when his mother naturalized.

However, in order for the applicant to receive the benefits of § 321 of the Act, either both parents must have naturalized or there must have been a legal separation of the parents. Matter of H--, supra, held that the term "legal separation" means either a limited or absolute divorce obtained through judicial proceedings. The record fails to contain that evidence. Absent evidence of a legal separation, the applicant cannot derive U.S. citizenship through the naturalization of only one parent and custody of the applicant by the naturalized parent under such circumstances does not result in derivation even though other requisite conditions are satisfied.

There is no provision under the law by which the applicant could have automatically acquired U.S. citizenship solely through his mother's naturalization. Therefore, the appeal will be dismissed.

ORDER: The appeal is dismissed.