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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

Public Copy



FILE: [Redacted] Office: Philadelphia

Date: JUN 25 2001

IN RE: Applicant: [Redacted]

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

IN BEHALF OF APPLICANT:



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

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 26, 1974, in Haiti. The applicant's father, [REDACTED] was born in Haiti in March 1943 and became a naturalized U.S. citizen on July 8, 1986. The applicant's mother, [REDACTED] was born in December 1948 in Haiti and has not yet become a United States citizen although she has an application pending. The applicant's parents married each other on September 14, 1967, according to documentation in another Service file. The applicant was lawfully admitted for permanent residence on December 5, 1984. He claims eligibility for a certificate of citizenship under section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1432.

The acting district director determined the record failed to establish that both of the applicant's parents had naturalized while he was under the age of 18 years.

On appeal, counsel argues that under the Child Citizenship Act (CCA) of 2000 (Pub.L. 106-395), a child will automatically become a U.S. citizen when the following conditions are met:

- (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
- (2) The child is under the age of eighteen years.
- (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

Section 321(a) of the Act, in effect at the time of the applicant's birth, provides that 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-Martinez, 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 section 321(a). We now hold that, as long as all the conditions specified in section 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 father became a naturalized U.S. citizen prior to his 18th birthday, (2) he was residing in the United States in his father's legal custody as a lawful permanent resident when his father naturalized.

However, in order for the applicant to receive the benefits of section 321 of the Act, both of his parents must have naturalized prior to his 18th birthday.

On appeal, counsel states that the applicant has satisfied the requirements of the CCA.

The CCA provides benefits only to those persons who have not yet reached their 18th birthday as of February 27, 2001. The applicant was 26 years old on the effective date of the CCA. Therefore, the applicant does not qualify for the benefits of the CCA.

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

ORDER: The appeal is dismissed.