

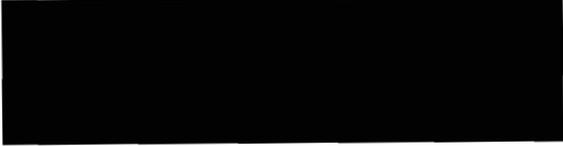


U.S. Department of Justice

Immigration and Naturalization Service

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



FILE: [Redacted]

Office: Pennsylvania

Date: MAR - 7 2001

IN RE: Applicant: [Redacted]

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.

Identification data deleted to prevent clearly unwarranted invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

*Robert P. Wiemann*  
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 June 2, 1975 in the Dominican Republic. The applicant's father, [REDACTED] was born in the Dominican Republic in August 1974 and became a naturalized U.S. citizen on March 2, 1992. The applicant's mother, [REDACTED] was born in April 1952 in the Dominican Republic and never became a United States citizen.

The applicant's father married [REDACTED] on January 23, 1971 and that marriage was terminated by mutual consent on December 14, 1973. The applicant's parents were not married to each other at the time of his birth. On March 19, 1979, the applicant's parents remarried and the applicant was legitimated. The second marriage ended on July 27, 1985. Custody of the applicant was awarded to his mother. There is no evidence to show that the legal determination of custody was ever overturned or overturned prior to the applicant's 18th birthday. The applicant's father married [REDACTED] in January 1986 and she died in 1988.

The applicant was lawfully admitted for permanent residence in June 1988. 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 acting district director initially determined that there was no evidence in the record to show that the applicant's parents ever married so legal separation and legal custody could not be established. Later, after the appropriate documentation was received, the acting district director entered a revised decision in which it was determined that, although the applicant's parents later married and legitimated the applicant, the applicant failed to derive U.S. citizenship upon his father's naturalization because the applicant's mother was granted legal custody when the parents divorced in 1985 and his mother never became a U.S. citizen.

On appeal, the applicant states that the decision denying the application is defective and based on erroneous interpretation of the applicable statutes. The applicant states that § 309 of the Act, 8 U.S.C. 1409, provides for the derivation of citizenship in this matter.

Section 309 of the Act provides, in part, that:

- (a) The provisions of paragraphs (c), (d), (e), and (g) of § 301, and paragraph (2) of § 308, shall apply as of the date of birth to a person born out of wedlock if-

(1) a blood relationship between the person and the father is established by clear and convincing evidence,

(2) the father had the nationality of the United States at the time of the person's birth,

(3) the father (unless deceased) has agreed in writing to provide financial support for the person until the person reaches the age of 18 years, and

(4) while the person is under the age of 18 years-

(A) the person is legitimated under the law of the person's residence or domicile,

(B) the father acknowledges paternity of the person in writing under oath, or

(C) the paternity of the person is established by adjudication of a competent court.

Although the applicant was born out of wedlock as indicated and he was later legitimated by his parent's marriage, his father was not a United States citizen at the time of the applicant's birth in 1975 as required by § 309(a)(2) of the Act. Therefore, the provisions of § 309 of the Act are not applicable in this matter.

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 father became a naturalized U.S. citizen in 1992 and prior to the applicant's 18th birthday, (2) the applicant was legitimated by his parent's marriage in 1979 and (3) he was residing in the United States as a lawful permanent resident when his parents divorced in 1985.

However, in order for the applicant to receive the benefits of § 321 of the Act, the applicant must have been in the legal custody of the naturalized parent. The record clearly reflects that custody of the applicant was awarded to his mother who never became a naturalized citizen. Therefore, the father's naturalization does not result in the applicant's derivation of U.S. citizenship.

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. This decision is without prejudice to the applicant seeking U.S. citizenship through normal naturalization procedures.

**ORDER:** The appeal is dismissed.