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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: Seattle

Date: AUG - 2 2002

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: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 that 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, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Seattle, Washington, 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 March 16, 1981, in Ethiopia. The applicant's father [REDACTED] was born in Ethiopia in 1962 and became a naturalized U.S. citizen on November 10, 1995. The applicant's mother [REDACTED] was born in 1960 in Ethiopia and never became a United States citizen. The applicant's parents never married each other, and the applicant's mother is variously stated to have died on October 19, 1981 and on July 30, 1983. The applicant was recognized by his father and classified as a "child" for immigrant visa purposes. The applicant was lawfully admitted for permanent residence on December 6, 1997. The applicant claims eligibility for a certificate of citizenship under section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1432.

The district director determined the record failed to establish that the applicant's father legitimated him under the laws of the father's residence or domicile or the applicant's residence or domicile prior to the applicant's 16th birthday while he was in his father's legal custody. The district director then denied the application accordingly.

The applicant's appeal was filed in response to the district director's initial decision dated October 25, 1999, in which the district director denied the application for failure of the applicant to provide proof of the death of his mother. The district director's second decision was entered on July 31, 2001, based on the above discussion and supersedes any prior decisions or actions taken by the Service. The applicant has failed to provide any additional comments or evidence for the record. Therefore, a decision will be entered based on the present record.

Section 321 of the Act was repealed on February 27, 2001. An applicant who was over the age of 18 on that date is ineligible to obtain the new benefits of the Child Citizenship Act (CCA) of 2000, Pub.L. 106-395, which allows for the naturalization of "at least one parent" to suffice while the child is under the age of 18. The CCA provides benefits only to those persons who had not yet reached their 18th birthday as of February 27, 2001.

Section 321(a) of the Act, prior to being repealed, provided 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, 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 the applicant's 18th birthday, (2) the applicant was acknowledged by his father enabling him to be classified as a "child" for immigrant visa purposes, (3) he became the beneficiary of an approved visa petition filed by his father, (4) he was lawfully admitted to the United States for permanent residence at the age of 16 years and 8 months, and (5) he was residing in the United States in his father's legal custody after his lawful admission.

For immigration purposes in titles I and II of the Act, section 101(b)(1)(D) of the Act, 8 U.S.C. 1101(b)(1)(D), defines the term "child," in part as a child born out of wedlock, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural...father if the father has or had a bona fide parent-child relationship with the person.

For citizenship purposes in title III of the Act, section 101(c) of the Act, 8 U.S.C. 1101(c), defines the term "child," in part as...a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere, and...if such legitimation...takes place before the child reaches the age of 16 years...and the child is in the legal custody of the legitimating...parent...at the time of such legitimation....

Thus, the applicant can be classified as a "child" for visa issuing purposes where he has been in a bona fide parent-child relationship but fails to qualify for citizenship purposes due to the failure of the parent to legitimate the child according to the law of the parent's residence or domicile or the child's residence or domicile.

In some jurisdictions, marriage of the natural parents is the only method available to legitimate a child. In other jurisdictions, recognition, acknowledgement and support of the child by the natural parent may be the legal requirements. The applicant in this matter was lawfully admitted to the United States for permanent residence at the age of 16 years and 8 months. In the present matter, the record is devoid of evidence to establish that the applicant was legitimated under the law of his residence or domicile or of the father's residence or domicile and was in the father's legal custody before the applicant reached the age of 16 years. 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.