



ED

U.S. Department of Justice
Immigration and Naturalization Service

Identifying data deleted to
prevent clearly unwarranted
invasion of personal
privacy.

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



FILE: 

Office: Miami

Date:

15 AUG 2002

IN RE: Applicant: 

APPLICATION: Application for Certificate of Citizenship under Section 320 of the
Immigration and Nationality Act, 8 U.S.C. 1431

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


Robert P. Wiemann, Director
Administrative Appeals Office

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

The applicant was born on July 11, 1988, in Cuba. The applicant's father, [REDACTED] was born in Cuba in 1955 and never became a U.S. citizen. The applicant's mother, [REDACTED] was born in Cuba in 1956 and became a naturalized United States citizen on July 20, 2001. The applicant's parents never married each other. The applicant was lawfully admitted for permanent residence on November 11, 1995. The applicant is seeking a certificate of citizenship under section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1431.

The acting district director reviewed the record and concluded that the applicant was not legitimated and her mother's naturalization occurred after the effective date of the amendment.

On appeal, the applicant's mother states that she was never married to the applicant's father, and she believes that the applicant can derive citizenship through her.

Sections 320 and 322 of the Act were amended by the Child Citizenship Act of 2000 (CCA), and took effect on February 27, 2001. The CCA benefits all persons who have not yet reached their 18th birthdays as of February 27, 2001. The applicant was 12 years and 7 months old on February 27, 2001.

Section 320(a) of the Act effective on February 27, 2001, provides, in part, that a child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have fulfilled:

- (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.
- (b) Subsection (a) shall apply to a child adopted by United States citizen parent if the child satisfies the requirements applicable to adopted children under section 101(b)(1).

Children born out of wedlock who have not been legitimated are not included in the definition of the term "child" used in section 101(c) of the Act, 8 U.S.C. 1101(c) as used in Title III of the Act.

By virtue of the Family Code of Cuba, effective prospectively from March 8, 1975, all children have equal rights under the laws of that country. In Matter of Martinez, 18 I&N Dec. 399 (BIA 1983), the Board of Immigration Appeals (BIA) held that a native and citizen of Cuba born out of wedlock and acknowledged by her natural father prior to the person's 18th birthday is a legitimated child for immigration purposes.

The record contains a statement dated April 10, 1995, by the applicant's natural father, Jesus Policarpo Cabodevilla Gonzalez, in which he acknowledges that he is the father of Migdel Cabodevilla Brito and grants his permission for her to travel with her mother to the United States. The applicant was 6 years and 9 months old on April 10, 1995.

Under the CCA, the Service not only requires a child born out of wedlock to have been legitimated, but also to have been in the legal custody of the legitimating parent at the time of such legitimation. If legitimation was accomplished by means of a general law (i.e. collective legitimation statutes, as in Cuba), evidence must be submitted that the child was in the legal custody of the father at the time of legitimation.

The applicant was classified as a refugee on September 14, 1995, following an interview at the U.S. Interest Section in Havana. She listed her address as Bosque # 200, e/Avenida Los Caneyes 2da RPTO La Riveria, Santa Clara, Cuba. The applicant's father listed his address as Carretera de Malezas, Edificio 6, Apartamento 6 y Segunda, Santa Clara, Cuba. Although the applicant is considered to be legitimated under Cuban law, the record fails to establish that she was in the legal custody of the father at the time of legitimation. Therefore, the applicant fails to qualify for consideration under section 320 of the Act.

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. The applicant has not met that burden. Therefore, the appeal will be dismissed.

ORDER: The appeal is dismissed.