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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



AUG 20 2002

FILE:

Office: Buffalo

Date:

IN RE: Applicant:



APPLICATION:

Application for Certificate of Citizenship under Sections 320 and 321 of the Immigration and Nationality Act, 8 U.S.C. 1431 and 1432

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, Buffalo, New York, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant was born on September 18, 1964, in Haiti. The applicant's father [REDACTED] was born in July 1932 in Haiti. The district director indicated in his decision that the applicant's father is a U.S. citizen. There is nothing in the record to confirm that. The applicant's mother [REDACTED] was born in December 1937 in Haiti and became a naturalized U.S. citizen on February 13, 1979. The applicant's parents married each other on December 21, 1963. The applicant was lawfully admitted for permanent residence on May 6, 1970. The applicant seeks to become a naturalized citizen under section 320 and 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1431 and 1432.

The district director reviewed the record and concluded that the applicant had failed to establish he was under the of 18 years to satisfy the requirements of section 320 of the act. The district director also concluded that the applicant was ineligible for the benefits of section 321 of the Act because both parents failed to naturalize prior to the applicant's 18th birthday. The district director denied the application accordingly.

On appeal, the applicant states that his father was mentally incompetent and was institutionalized for a period of time after the mother's naturalization and prior to the applicant's 18th birthday. The applicant states the Service should consider his father's mental state at that time and that the applicant was unable to fulfill the requirements of citizenship due to his father's condition.

The applicant submitted medical record which indicate that his father was admitted to a psychiatric hospital on March 25, 1977, and discharged on April 26, 1977, when the applicant was 12 years old. He was diagnosed with chronic undifferentiated schizophrenia upon discharge and specific medicines and further counselling were recommended. An additional document dated January 12, 2000, from the Nassau County Medical Center indicates that the applicant's father was unable to care for his children due to his illness.

Section 321 of the Act was repealed on February 27, 2001. Former section 321(a) of the Act 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 applicant bases his claim to citizenship on his mother's naturalization and his father's inability to naturalize due to his mental state.

8 C.F.R. 316.12(b) provides that naturalization is not precluded if, during part of the statutory period, the applicant for naturalization was legally incompetent or confined to a mental institution.

There is no provision in former section 321 of the Act that provides for waiving the requirement of subsection (a)(1) requiring both parents to naturalize even though one parent may be incompetent.

8 C.F.R. 341.2(c) provides that the burden of proof shall be upon the claimant, or his parent or guardian if one is acting in his behalf, to establish the claimed citizenship by a preponderance of the evidence. The applicant in this matter has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.