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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: Hartford (BOS)

Date: AUG 20 2002

IN RE: Applicant: [Redacted]

APPLICATION: Application for Certificate of Citizenship under Section 321 of the
Immigration and Nationality Act, 8 U.S.C. 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, Boston, Massachusetts, 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 October 15, 1992, in Haiti. The applicant's father, [REDACTED] was born in June 1966 in Haiti and never had a claim to United States citizenship. The applicant's mother, [REDACTED] was born in October 1965 in Haiti and became a naturalized United States citizen on September 25, 2000. The applicant's parents married each other on June 27, 1990, and divorced on April 4, 1995. The applicant was lawfully admitted for permanent residence on December 13, 1993. The applicant seeks a certificate of citizenship under section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1432.

The district director reviewed the parent's divorce decree and noted that the court did not grant physical and legal custody of the applicant to one of her parents since she was, and still is, residing in Haiti with her grandmother. The district director determined that the applicant's mother did not have legal and physical custody of the applicant and denied the application accordingly.

On appeal, the applicant's mother states that her daughter will begin living with her in the United States in June 2001.

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 applicant was 10 years and 4 months old on February 27, 2001.

Section 321 of the Act previously in effect provided, in pertinent part, that:

(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.

The record establishes that (1) the applicant's mother became a naturalized U.S. citizen prior to the applicant's 18th birthday, but (2) the applicant was residing in Haiti with her grandmother and not in her mother's legal custody as a lawful permanent resident when her mother naturalized.

The applicant has failed to establish her eligibility for the benefit sought, and the appeal will be dismissed.

Service instructions provide that applications filed under the old sections 320 and 321 of the Act which would not have been approvable under that section of law, but are now approvable under new section 320 of the Act should be adjudicated under the new law. Any office that becomes aware of an application that has been properly denied under the old statute but would have been approved if filed on February 27, 2001, should reopen the application on a Service motion, without fee, and adjudicate it pursuant to the new law.

Section 320(a) of the Act, 8 U.S.C. 1431(a), effective February 27, 2001, provides that a child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been 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 18 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.

Although the applicant has failed to meet the requirements of section 321 of the Act, she is now 9 years and 5 months old and still has time to satisfy the provisions of section 320 of the Act by residing in the United States in the legal and physical custody of her citizen parent. Therefore, the appeal will be dismissed. This decision is without prejudice to the applicant seeking U.S. citizenship under another section of the Act.

ORDER: The appeal is dismissed.