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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:



Office: Miami

Date:

JUL 25 2002

IN RE: Applicant:



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 Acting District Director, Miami, Florida, 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 April 16, 1987, in Jamaica. The applicant's father, [REDACTED] was born in August 1963 in Jamaica and became a naturalized U.S. citizen on May 1, 2000. The applicant's mother, [REDACTED] was born in August 1968 in Jamaica and never became a United States citizen. The applicant's parents never married each other. The applicant was recognized by his father at birth. The applicant's father married [REDACTED] a U.S. citizen on February 28, 1997, and the applicant was classified as the stepchild of a U.S. citizen on November 14, 1997. He was lawfully admitted to the United States on a conditional basis on March 29, 1998. The applicant claims eligibility for a certificate of citizenship under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1432.

The acting district director determined the record failed to establish that the applicant is a lawful permanent resident as required under section 321 of the Act. The acting district director denied the application accordingly.

On appeal, the applicant's father states that the applicant's mother passed away when he was a baby. The applicant's father states that his present wife did not have the conditional status removed and he (the father) did not know about it. The applicant's father seeks advice on what steps to take to keep his son in the United States.

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.

Former section 321(a) of the Act provided 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.

Pursuant to 8 C.F.R. 216.4(a)(6), failure to properly file Form I-751 within the 90-day period immediately preceding the second anniversary of the date on which the alien obtained lawful permanent residence on a conditional basis shall result in the automatic termination of the alien's permanent resident status and the initiation of proceedings to remove the alien from the United States. Form I-751 may be filed after the expiration of the 90-day period ... with the district director prior to jurisdiction vesting with the immigration judge in removal proceedings or with the immigration judge after jurisdiction vests with the judge.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant has failed to meet this burden and to establish that he is a lawful permanent resident as required in former section 321 of the Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.