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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: Miami

Date: OCT 29 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 Acting District Director, 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 February 12, 1982, in Haiti. The applicant's father, [REDACTED] was born in Haiti in October 1955 and became a naturalized U.S. citizen on September 25, 1999. The applicant's mother, [REDACTED] was born in December 1965 in Haiti and never became a United States citizen. The applicant's parents married each other on May 15, 1995. The applicant was lawfully admitted for permanent residence on December 14, 2000. The applicant seeks a certificate of citizenship under section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432.

The acting district director determined that the applicant failed to establish that she became a lawful permanent resident while under the age of 18 years and denied the application accordingly.

On appeal, the applicant submits documentation to prove she is the child of [REDACTED]. That documentation is already in the record, and that issue was resolved in visa petition proceedings. This issue was not raised by the acting district director.

Section 321 of the Act was repealed on February 27, 2001, by the Child Citizenship Act (CCA) of 2000, Pub.L. 106-395, which removed the legal separation requirement from the rules of derivative naturalization. The provisions of the CCA are not retroactive. Matter of Rodriguez-Trejedor, 23 I&N Dec. 153 (BIA 2001). However, as noted in the publication of the interim rule implementing the CCA, all persons who acquired citizenship automatically under former section 321 of the Act, as previously in force prior to February 27, 2001, may apply for a certificate of citizenship at any time.

Former section 321 of the Act provided, in 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.

In Matter of Fuentes, 21 I&N Dec. 893 (BIA 1997), the Board stated the following in reference to a Department of State *Passport Bulletin-96-18*, issued November 6, 1996: "Through subsequent discussions, [the interested agencies] have agreed on what we believe to be a more judicious interpretation of section 321(a) of the Act. 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. Citizenship would be acquired on the date the last condition is satisfied."

The record establishes that the applicant's father became a naturalized U.S. citizen prior to her 18th birthday. However, in order for the applicant to receive the benefits of section 321 of the Act, she must have begun to reside permanently in the United States while under the age of 18 years. The applicant became a lawful permanent resident on December 14, 2000, when she was 18 years and 10 months old.

There is no provision under the law by which the applicant could have automatically acquired U.S. citizenship through her father's naturalization. Therefore, the district director's decision will be affirmed. This decision is without prejudice to the applicant seeking U.S. citizenship through normal naturalization procedures.

ORDER: The appeal is dismissed.