



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

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prevent clearly unwarranted
invasion of personal privacy**

FILE #

Office: Miami

Date: **JAN 08 03**

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:

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
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 sustained.

The record reflects that the applicant was born on January 9, 1987, in England. The applicant's father, [REDACTED] was born in Jamaica in November 1960 and became a naturalized U.S. citizen on September 19, 2000. The applicant's mother, [REDACTED] was born in August 1957 in Jamaica and became a naturalized U.S. citizen on March 28, 2002. The applicant's parents married each other on June 29, 1985, and divorced on January 30, 1996. The applicant was lawfully admitted for permanent residence on April 23, 1992. The applicant seeks 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 reviewed the parent's divorce decree which granted primary physical residence to the applicant's mother. The acting district director determined the record failed to establish that the applicant was in the legal custody of the naturalizing parent and denied the application accordingly.

On appeal, the applicant submits evidence that his mother became a naturalized U.S. citizen in March 2002.

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 (1) the applicant's father became a naturalized U.S. citizen prior to the applicant's 18th birthday, (2) the applicant was legitimate at birth, (3) the applicant became the beneficiary of an approved visa petition filed by his father, and (4) he was residing in the United States as a lawful permanent resident when his father naturalized.

However, in order for the applicant to receive the benefits of section 321 of the Act, he must have been in the legal custody of the parent naturalizing. The divorce decree granted primary physical custody to the applicant's mother, who did not naturalize prior to the date when section 321 of the Act was repealed. Therefore, the applicant did not derive U.S. citizenship through former section 321 of the Act.

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 14 years, 1 month old on February 27, 2001. Therefore, he is eligible for the benefits of the CCA.

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

The record reflects that the applicant's mother became a naturalized U.S. citizen on March 28, 2002. The applicant has now satisfied the requirements of section 320 of the Act as he is (1) under the age of 18 years, and (2) he is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

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 met that burden. Therefore, the appeal will be sustained.

ORDER: The appeal is sustained. The acting district director's decision is withdrawn, and the application is approved.