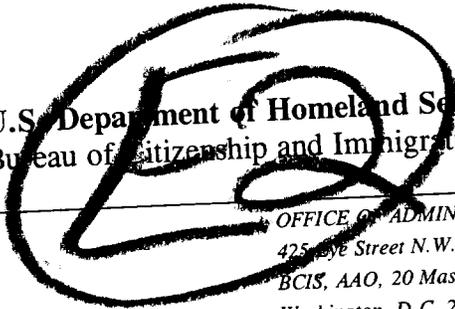


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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services



OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



FILE: [REDACTED] Office: NEW YORK, NEW YORK

Date: **SEP 30 2003**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under section 321 of the former Immigration and Nationality Act, 8 U.S.C. § 1432 .

ON 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on June 6, 1953, in the Dominican Republic. The applicant's mother was born in the Dominican Republic, and she became a naturalized United States (U.S.) citizen on August 20, 1962. The applicant's natural parents never married and the applicant's father is unknown. The applicant was lawfully admitted to the United States for permanent residence on March 17, 1963. The applicant seeks a certificate of citizenship under section 321 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432.

The district director assessed the applicant's claim to U.S. citizenship pursuant to section 320 of the present Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, and section 322 of the former Act, 8 U.S.C. § 1433. The district director found that the applicant had failed to meet the age requirements for filing for a certificate of citizenship under section 320 of the Act, and section 322 of the former Act. The district director additionally found that the applicant was a legitimate child and therefore ineligible for U.S. citizenship pursuant to out of wedlock provisions in the Act.

On appeal, the applicant asserts that pursuant to section 321 of the former Act, he meets the requirements for U.S. citizenship as a child born out of wedlock to a naturalized U.S. citizen mother.

Under section 320 of the Act, as amended, a child born outside of the U.S. automatically becomes a citizen of the United States upon fulfillment of the following conditions:

- (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.

Section 322 of the former Act, states in pertinent part that:

A parent who is a citizen of the United States may apply to the Attorney General for a certificate of

citizenship on behalf of a child born outside the United States. The Attorney General shall issue such a certificate of citizenship upon proof to the satisfaction of the Attorney General that the following conditions have been fulfilled:

- (1) At least one parent is a citizen of the United States, whether by birth or naturalization.
- (2) The child is physically present in the United States pursuant to a lawful admission.
- (3) The child is under the age of 18 years and in the legal custody of the citizen parent.

. . . .

The AAO finds that the applicant did not meet the age requirements set forth in section 320 of the Act and section 322 of the former Act.

The AAO also finds, however, that the district director erroneously concluded that the applicant was legitimated by his natural father under Dominican Republic laws, and that the district director thus erred in not assessing the applicant's claim to automatic citizenship under section 321 of the former Act.

The district director's decision states that:

Service records reflect no evidence of a marriage of your biological parents. [Dominican] Republic, your country of birth, recognizes your father as a legitimate parent even though he was never married to your mother. (Refer to Interim Decision #3329 "In [REDACTED] Eff. 1/1/95)" . . . [y]ou are therefore recognized as a legitimate child having two parents and thus subject to the provisions and requirements of . . . former Section 322 of the ACT.

See *District Director Decision*, dated September 6, 2002. The district director's decision provides no additional explanation or language to support the conclusion that the applicant is a legitimate child under Dominican Republic laws.

A careful review of the Board of Immigration Appeals ("Board") decision referred to by the district director reflects that, in order to be recognized as a legitimate child in the Dominican Republic, **the child's father must have acknowledged paternity** of the child prior to the child's 18th birthday.

See *In re Martinez-Gonzalez*, 1997 WL 602544 (BIA). Moreover, in the Board case, *Matter of Cabrera*, 21 I&N Dec. 589 (BIA 1996), the Board reviewed legitimation laws in the Dominican Republic and stated that:

[A] child residing or domiciled in the Dominican Republic may qualify as a legitimated child under section 101(b)(1)(C) **as soon as his father acknowledges paternity in accordance with Dominican law** prior to reaching the age of 18

Cabrera at 592. In the present case, the applicant's birth certificate contains no information regarding who his natural father is and the record contains no evidence to indicate that the applicant's natural father ever acknowledged paternity of the applicant.

Moreover, it is noted that the Dominican Republic legitimation law referred to by the district director and in the Board decisions discussed above, was enacted on April 22, 1994, well after the applicant turned 18 years old. See *In re Martinez-Gonzalez*, *supra*. The applicant could thus not have been legitimated pursuant to the law.

Based on the above evidence, the applicant's case should have been adjudicated pursuant to the immigration law as it applies to a child born out of wedlock to a naturalized U.S. citizen mother.

The record reflects that the applicant's mother became a naturalized U.S. citizen in 1962. The applicable law regarding the automatic acquisition of citizenship through parents who became naturalized U.S. citizens between December 24, 1952, and February 27, 2001, is contained in section 321 of the former Act, 8 U.S.C. § 1432.

Section 321 of the former Act states in pertinent part that:

(a) A child born outside of the United States of alien parents . . . 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 such child is under the age of eighteen 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 (1) of this subsection, or the parent naturalized under clause (2) or (3) of this subsection, or thereafter begins to reside permanently in the United States while under the age of eighteen years.

As discussed above, the evidence in the record establishes that the applicant was not legitimated. The evidence further establishes that the applicant's mother became a naturalized U.S. citizen prior to the applicant's 18th birthday and that the applicant was in her legal custody. The evidence additionally establishes that the applicant was admitted into the U.S. as a lawful permanent resident in March 1963, and that his admission and residence in the U.S. occurred subsequent to his mother's naturalization and prior to his 18th birthday. The applicant has thus established that he is entitled to U.S. citizenship pursuant to section 321 of the former Act. Accordingly, his appeal is sustained.

ORDER: The appeal will be sustained.