U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEW YORK, NEW YORK Date: MAR 01 2004

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:

[redacted]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

PUBLIC COPY

This is the decision of the Administrative Appeals Office 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.

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.

According to the record, the applicant was born on November 20, 1968, in Jamaica. The record indicates that the applicant's mother was born in Jamaica, and that she became a naturalized United States (U.S.) citizen in January 1979. The applicant was born out of wedlock and the applicant's father is not named on his birth certificate. The applicant does not claim that his father is a U.S. citizen. The record indicates that the applicant entered the U.S. pursuant to a lawful admission on July 17, 1981, when he was 12 years old. The applicant seeks a certificate of citizenship pursuant to section 321 of the former Immigration and Nationality Act (former Act), 8 U.S.C. § 1432.

The district director found that the applicant had failed to establish he was under the age of 18 pursuant to citizenship requirements set forth in section 320 of the Act, 8 U.S.C. § 1431. The application was denied accordingly.

On appeal, counsel asserts that the applicant qualifies for U.S. citizenship pursuant to section 321 of the former Act. Specifically, counsel asserts that, despite changes in Jamaican law that accord equal treatment to all children born in Jamaica, the applicant was not legitimated pursuant to former section 321 requirements, because paternity cannot be established in his case.

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.

Because the applicant was over the age of 18 on February 27, 2001, he is not eligible for automatic citizenship pursuant to section 320 of the Act, as amended.

The AAO finds that although the district director's decision correctly determined that the applicant did not qualify for U.S. citizenship pursuant to section 320 of the Act, as amended on February 27, 2001, the district director erred in not applying the provisions of section 321 of the former Act to the present case.

A child who satisfied the statutory conditions of section 321(a) of the former Act before turning 18, acquired derivative U.S. citizenship regardless of the child's age on and subsequent to February 27, 2001. Citizenship was acquired on the date the last condition was satisfied. *See Matter of Fuentes-Martinez,* 21 I&N Dec. 893, 897 (BIA 1997).

Section 321 of the former Act stated 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.

The evidence in the record establishes that the applicant was born out of wedlock, and that he was admitted into the United States in 1981, at the age of 12, pursuant to an immigrant petition filed by his U.S. citizen mother. The record additionally reflects that the applicant was in the legal custody of his mother subsequent to his 1981, admission into the United States.[1] The applicant has also established that he has not met the paternity requirements for legitimation under Jamaica's 1976 Status of Children Act.

Counsel correctly points out that, although the 1976 Jamaican Status of Children Act (Jamaican Act) abolishes all distinctions between legitimate and illegitimate children, the Jamaican Act contains explicit provisions pertaining to proof of paternity. Pursuant to section 8 of the Jamaican Act, paternity may be demonstrated through specific documents. These documents include a birth certificate reflecting the father's name, a signed legal acknowledgement by the mother naming the child's father, or a court decree as to the paternity of the child.

In *Matter of Clahar,* 18 I&N Dec. 1, 2 (BIA 1981), the Board held:

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[1] The AAO notes that:

> [T]he mother of an illegitimate child generally has the primary right to its custody, and in the absence of affirmative evidence that the father has obtained custody, we will not presume that the mother has been deprived of custody.

See, Matter of De la Rosa, 14 I&N Dec. 728, 729 (BIA 1974).

> [A] child within the scope of the Jamaican Status of Children Act may be included within the definition of a legitimate or legitimated "child" set forth in section 101(b)(1) of the Immigration and Nationality Act so long as the familial tie or ties are established by the requisite degree of proof and the status arose within the time requirements set forth in section 101(b)(1).

In *Matter of Moraga,* 23 I&N Dec. 195 (BIA 2001), the Board stated, "[i]n light of the 1983 change in Salvadoran law . . . a child born out of wedlock who was under 18 years of age on December 16, 1983, or who was born on or after that date, may now qualify as the legitimated child of his or her parent." Footnote 6 clarified, however that, "[t]o establish a child's paternity, if he or she is born out of wedlock, the acknowledgment of the child according to the legal procedures established by the Family Code may be required."

The record in the present case reflects that the applicant's original birth certificate does not contain a father's name, and there is no evidence of an amended birth certificate in the record. The record additionally contains no evidence to indicate that the applicant's mother has acknowledged or signed a legal document naming the applicant's father, and the record contains no court decree as to the paternity of the applicant.

Accordingly, the AAO finds that the applicant's paternity has not been established by legitimation, and that he meets the requirements set forth in section 321(a)(3) of the former Act. Because the applicant has established that he qualifies for a certificate of citizenship pursuant to section 321 of the former Act, the appeal will be sustained.

ORDER: The appeal is sustained.