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U.S. Citizenship and Immigration Services

**PUBLIC COPY**

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[redacted]

MAR 23 2004

FILE: [redacted] Office: NEW YORK, NEW YORK Date:

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship pursuant to Section 320 of the Immigration and Nationality Act, 8 U.S.C. § 1431, and Section 322 of the former Immigration and Nationality Act, 8 U.S.C. § 1433.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

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 Director/District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record contains a copy of the applicant's birth registration form reflecting that the applicant was born on November 3, 1965, in Jamaica. The birth registration form reflects further that the applicant's mother is , and that his father is Both parents were born in Jamaica. The record contains a copy of a U.S. Certificate of Naturalization issued to on April 26, 1983. The record additionally contains a copy of a 1983, New York State, Divorce Decree indicating that and divorced in April 1983, and that "The woman may resume the use of her maiden name, which is The AAO notes that the divorce decree does not make any reference to the name In addition, the AAO notes that the record does not contain the second page of the Form N-600, application for Certificate of Citizenship (Form N-600), which normally contains biographical information about an applicant's parents. The AAO notes further that the record contains no information to clarify the applicant's relationship to or to clarify whether and are the same person.

The applicant seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, and 322 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1433.

The director/district director concluded that the applicant was statutorily ineligible for a certificate of citizenship under section 322 of the former Act because he turned 18 years old prior to the final adjudication of his application. The application was denied accordingly.

On appeal, the applicant asserts that his mother became a U.S. citizen prior to his 18th birthday in 1983, and that he automatically became a U.S. citizen by operation of law at that time. The applicant submits copies of section 320(a) of the Act, as amended by the Child Citizenship Act of 2000, and section 322(a) of the former Act, to support his assertion of automatic citizenship.

The AAO notes that the Child Citizenship Act of 2000 (CCA), which took effect on February 27, 2001, amended section 320 of the Act, and presently allows a child born outside of the U.S. to automatically become 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.

Legal precedent decisions clearly reflect that the provisions of the CCA are not retroactive, and that the amended provisions of section 320 of the Act, apply only to persons who were not yet 18-years-old as of February 27, 2001. Because the applicant was over the age of 18, on February 27, 2001, he is not eligible for the benefits of section 320 of the amended Act. *See Matter of Rodriguez-Tejedor,* 23 I&N Dec. 153 (BIA 2001).

Section 322 of the former Act provides, in pertinent part:

(a) Application of citizen parents; requirements

A parent who is a citizen of the United States may apply to the Attorney General [now the Secretary, Homeland Security, "Secretary"] for a certificate of citizenship on behalf of a child born outside the United States. The Attorney General [Secretary] shall issue such a certificate of citizenship upon proof to the satisfaction of the Attorney General [Secretary] 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.

. . . .

b) Attainment of citizenship status; receipt of certificate

Upon approval of the application . . . [and] upon taking and subscribing before an officer of the Service [CIS] within the United States to the oath of allegiance required by this chapter of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the Attorney General [Secretary] with a certificate of citizenship.

The terms of section 322 of the former Act make clear that, in addition to meeting the requirements set forth in section 322(a) of the former Act, an applicant must also meet the requirements of section 322(b), by establishing that the application for U.S. citizenship was approved by the Immigration and Naturalization Service (now Citizenship and Immigration Services, CIS) and that an oath of allegiance was taken before an applicant's 18th birthday.

In the present case, the director/district director determined that the applicant failed to meet the requirements set forth in section 322(b) of the former Act, because the Service (CIS) did not approve his certificate of citizenship application before he turned 18, and because he did not take an oath of allegiance prior to his 18th birthday. The AAO agrees. Moreover, the AAO notes that, based on the evidence in the record, the applicant also failed to establish that his mother is the same person as and thus that his mother is a U.S. citizen. The AAO finds further that, even assuming the applicant's mother is a U.S. citizen, the applicant fails to qualify for a certificate of U.S. citizenship pursuant to sections 321, 8 U.S.C. § 1432, and 320, 8 U.S.C. § 1431, of the former Act.

Former section 320 of the Act provided that:

(a) A child born outside of the United States, one of whose parents at the time of the child's birth was an alien and the other of whose parents then was and never thereafter ceased to be a citizen of the United States, shall, if such parent is naturalized, become a citizen of the United States, when

(1) such naturalization takes place while such child is under the age of 18 years; and

> (2) such child is residing in the United States pursuant to a lawful admission for permanent residence at the time of naturalization or thereafter and begins to reside permanently in the United States while under the age of 18 years.

The applicant's parents were not married at the time of his birth and neither of the applicant's parents were U.S. citizens when he was born. The applicant therefore does not qualify for consideration under former section 320 of the Act.

Former section 321 of the Act provided, in pertinent 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:
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> (1) The naturalization of both parents; or
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> (2) The naturalization of the surviving parent if one of the parents is deceased; or
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> (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.

The applicant does not qualify for consideration under former section 321 of the Act. The applicant's parents were never married and his mother did not obtain custody over the applicant pursuant to a legal separation or divorce. Furthermore, the applicant's birth registration form contains his father's name. Paternity was therefore established, and according to the Jamaican Status of Children Act of 1976, the applicant was legitimated by his father at birth. *See Matter of Clahar,* 18 I&N Dec. 1,2 (BIA 1981).

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. In this case, the burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.