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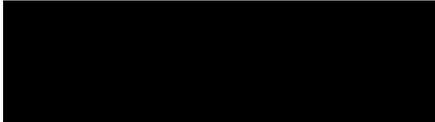
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529

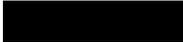
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U.S. Citizenship
and Immigration
Services



FILE:



Office: NEW YORK, NEW YORK

Date: 001 2008

IN RE:

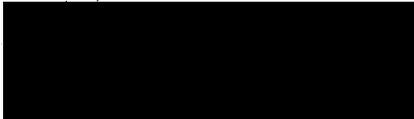
Applicant:



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 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 dismissed.

The record reflects that the applicant was born on January 1, 1980, in the Dominican Republic. The applicant's mother, [REDACTED] was born in the Dominican Republic on June 10, 1956, and she became a naturalized U.S. citizen on August 29, 1995, when the applicant was fifteen years old. The applicant's natural father, [REDACTED] is not a U.S. citizen. The record reflects that the applicant's parents did not marry. The applicant was admitted into the United States (U.S.) as a lawful permanent resident on October 2, 1988. She presently seeks a certificate of U.S. citizenship pursuant to section 321 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432.

The district director determined that the applicant was legitimated by her father in the Dominican Republic, and that she therefore did not satisfy the requirements of section 321 of the former Act. The application was denied accordingly.

On appeal, counsel concedes that the applicant's natural father (Mr. [REDACTED]) recognized the applicant as his daughter on her Dominican birth certificate on July 21, 1982. Counsel asserts, however, that the applicant is not a legitimate child of her father, because her parents never lived together and because she never lived with Mr. [REDACTED].

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.

(Emphasis added). The record contains no evidence to indicate that the applicant's parents married, or that her father became a naturalized U.S. citizen or died prior to the applicant's eighteenth birthday. The applicant

has thus not established that she is eligible to derive citizenship pursuant to sections 321(a)(1) and (2) of the former Act. Sections 321(a)(4) and (5) are also inapplicable to the applicant's case, because she failed to establish that she meets the requirements set forth in section 321(a)(3) of the former Act.

In *Matter of Cabrera*, 21 I&N Dec. 589, 592 (BIA 1996), the Board of Immigration Appeals (Board) stated:

[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 . . . [W]e conclude that the beneficiary in the present case has been legitimated under the laws of his residence or domicile prior to reaching the age of 18, as required by section 101(b)(1)(C).

The AAO notes that for section 101(b)(1)(C), 8 U.S.C. § 1101(b)(1)(C), definition of "child" purposes, legitimation had to occur prior to the child's eighteenth birthday. The definition of "child" contained in section 101(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(c), applies in citizenship and naturalization matters and requires that legitimation take place prior to the child's sixteenth birthday. In the present matter, the applicant's birth certificate reflects that her father publicly acknowledged his paternity over the applicant on July 21, 1982, when the applicant was two years old. The AAO therefore finds that the applicant was legitimated by her father in accordance with Dominican law, prior to her sixteenth birthday.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish citizenship by a preponderance of the evidence. Because the applicant failed to establish that she meets the requirements for citizenship as set forth in section 321 of the former Act, her appeal will be dismissed.

ORDER: The appeal is dismissed.